

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

VOL. I

LORETTA GREASLEY, )  
AS EXECUTOR OF THE ESTATE OF )  
MICHAEL J. MARRANCO, ) Case No. 1:15-CV-00642  
) (RJA) (JJM)  
Plaintiff, )  
)  
vs. ) August 20th, 2019  
)  
UNITED STATES OF AMERICA, )  
)  
)  
Defendant. )

**TRANSCRIPT OF BENCH TRIAL PROCEEDINGS  
BEFORE THE HONORABLE RICHARD J. ARCARA  
SENIOR UNITED STATES DISTRICT JUDGE**

APPEARANCES:

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For the Defendant: U.S. ATTORNEY'S OFFICE  
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08:54AM 1 THE CLERK: Civil action 2015-642A. Greasley v.

09:28AM 2 United States of America. Bench trial. Counsel, please state

09:28AM 3 your name and the party you represent for the record.

09:28AM 4 MR. MORATH: Joseph Morath for the plaintiff, Loretta

09:29AM 5 Greasley.

09:29AM 6 MS. FLEMING: Mary Pat Fleming on behalf of the

09:29AM 7 defendant.

09:29AM 8 THE COURT: All right.

09:29AM 9 MR. KHALIL: Adam Khalil on behalf of the defendant.

09:29AM 10 THE COURT: What is your name, sir?

09:29AM 11 MR. KHALIL: Adam Khalil.

09:29AM 12 THE COURT: Are you involved in this case?

09:29AM 13 MR. KHALIL: Yes, Your Honor. I appeared for a

09:29AM 14 motion to strike with Ms. Fleming.

09:29AM 15 THE COURT: All right. Are we all set? Let's go.

09:29AM 16 MR. MORATH: Before we begin, I do believe there's a

09:29AM 17 number of Joint Exhibits we agreed to stipulate into evidence.

09:29AM 18 We could do that now.

09:29AM 19 THE COURT: Let's hear the openings first.

09:29AM 20 MR. MORATH: Okay. May I begin, Your Honor?

09:29AM 21 Good morning, Your Honor. As you certainly know,

09:29AM 22 there are rules that apply to almost everything we do in our

09:30AM 23 lives. And not surprisingly, when someone else's health and

09:30AM 24 someone else's safety is in your hands, those doctors, those

09:30AM 25 nurses, those caregivers are required to follow a lot of

09:30AM 1 rules. And some of them are very simple and should go without  
09:30AM 2 saying, like taking the necessary steps to prevent somebody  
09:30AM 3 from being injured and taking the appropriate steps to treat  
09:30AM 4 somebody who is injured. These rules, you will learn, apply  
09:30AM 5 to hospitals. They apply to nursing homes. It doesn't matter  
09:30AM 6 the level of care. There are basic, simple common sense  
09:30AM 7 rules.

09:30AM 8 For example, if you are caring for a person who is at  
09:30AM 9 a high risk for falling and you fail to put a proper falls  
09:30AM 10 protection plan in place, you are responsible if that person  
09:30AM 11 falls and is injured. Likewise, when a person does fall,  
09:30AM 12 anyone examining that person, they're required to provide a  
09:30AM 13 certain level of care to both diagnose an injury and to take  
09:31AM 14 necessary steps to prevent further injury. If that's not done  
09:31AM 15 properly, the person failed to take those steps is  
09:31AM 16 responsible. These are two very simple, common sense rules  
09:31AM 17 that I think we can all agree upon.

09:31AM 18 Let me tell you the story of what happened in this  
09:31AM 19 case, what you will learn from the witnesses who take that  
09:31AM 20 witness stand and from the other evidence we will present  
09:31AM 21 throughout the course of this trial. And to do that, we need  
09:31AM 22 to go back a couple of years.

09:31AM 23 So, typically, let me take you to September 4th, the  
09:31AM 24 year 2013. On September 4th, one of the defendant's nurses  
09:31AM 25 visited a veteran at his home. And part of the reason for

09:31AM 1 that visit was to determine if that veteran was appropriate  
09:31AM 2 for a two-week stay at a respite care facility by the name of  
09:31AM 3 Pine Lodge.

09:31AM 4 And during that examination, the nurse found that the  
09:31AM 5 veteran ambulated without assistance. He was able to fully  
09:31AM 6 bear his own weight. In simple terms, he could walk and he  
09:32AM 7 could stand under his own power. He was independent in almost  
09:32AM 8 all of his daily activities of living. He could dress  
09:32AM 9 himself. He could feed himself. He could go to the bathroom  
09:32AM 10 himself. He could get in and out of bed or a chair by  
09:32AM 11 himself; all under his own power and his own strength.

09:32AM 12 Furthermore, you will learn that while he was at  
09:32AM 13 home, the veteran did not take any prescription pain  
09:32AM 14 medication at all and never required the use of supplemental  
09:32AM 15 oxygen. During that examination, the veteran was determined  
09:32AM 16 to be medically stable and he was cleared for admission into  
09:32AM 17 Pine Lodge.

09:32AM 18 Now, we know the next day, on September 5th of 2016,  
09:32AM 19 the veteran slid down some carpeted stairway in the back hall.  
09:32AM 20 Now, his son and daughter and his wife --

09:32AM 21 THE COURT: You said 2013?

09:32AM 22 MR. MORATH: 2013.

09:32AM 23 THE COURT: The first date you gave was 2013. Now  
09:32AM 24 you're talking 2016?

09:32AM 25 MR. MORATH: I may have misspoke, Your Honor. 2013.

09:33AM 1 I apologize.

09:33AM 2 THE COURT: Please.

09:33AM 3 MR. MORATH: Slip of the tongue. Apologize.

09:33AM 4 THE COURT: All right.

09:33AM 5 MR. MORATH: September 5th, 2013, the veteran slipped  
09:33AM 6 down some stairs in his back hall.

09:33AM 7 THE COURT: '13 or '16?

09:33AM 8 MR. MORATH: '13, Judge. It's all 2013 we're talking  
09:33AM 9 about.

09:33AM 10 THE COURT: Everything is 2013?

09:33AM 11 MR. MORATH: Right now, it's all 2013, yes.

09:33AM 12 THE COURT: You just mentioned 2016.

09:33AM 13 MR. MORATH: That was what the slip of the tongue  
09:33AM 14 was, Judge, because September 6th was the next day I'm talking  
09:33AM 15 about and I think I simply misspoke. I apologize.

09:33AM 16 THE COURT: All right.

09:33AM 17 MR. MORATH: The veteran had no signs or symptoms of  
09:33AM 18 injury when he slipped down the stairs on September 5th. In  
09:33AM 19 fact, the very next day, on September 6th, 2013, he was again  
09:33AM 20 seen at home by one of the defendant's nurses. The veteran's  
09:33AM 21 son and the veteran's daughter told him about the slip on the  
09:33AM 22 stairs. The nurse looked him over. The nurse had him stand,  
09:33AM 23 had him stretch, had him sit up, had him sit down. And he  
09:33AM 24 deemed that the veteran was not injured at all in that slip  
09:34AM 25 down the stairs.

09:34AM 1 Three days later, on the morning of September 9th,  
09:34AM 2 2013, the veteran arrived at Pine Lodge for what was supposed  
09:34AM 3 to be a two-week respite stay. He arrived in no acute  
09:34AM 4 distress and he walked through the doors of Pine Lodge under  
09:34AM 5 his own power. The veteran was admitted at 10:49 on  
09:34AM 6 September 9th of 2013. The initial physical exam, from that  
09:34AM 7 day at 12:03, states no history of fracture with any recent  
09:34AM 8 fall, no imaging consults were ordered, no precautions were  
09:34AM 9 taken for any suspected fracture or any other serious injury.

09:34AM 10 The records will show that at the time of his  
09:34AM 11 admission to Pine Lodge, the veteran was still able to walk  
09:34AM 12 75 feet with a walker, was independent with bed mobility, was  
09:34AM 13 independent with transfers. Some of the earliest records from  
09:34AM 14 that day, at the time of admission, reflect a pain assessment  
09:35AM 15 of zero. No pain.

09:35AM 16 When asked directly during his admission physical if  
09:35AM 17 he was having any pain by Jamie Kowalski, the veteran said he  
09:35AM 18 was not. The records reflect that he had no signs and  
09:35AM 19 symptoms of pain at that examination. Accordingly, Pine Lodge  
09:35AM 20 deemed that he was medically stable for admission and the  
09:35AM 21 medical director signed off on his admission to the facility.

09:35AM 22 But later that day, Pine Lodge staff also conducted a  
09:35AM 23 consult for physical therapy and at that point, the records do  
09:35AM 24 note that the veteran was complaining of back pain. However,  
09:35AM 25 those same records also note that the veteran was still able

09:35AM 1 to walk 75 feet with a rolling walker. He was still  
09:35AM 2 independent with transfers and absolutely nothing was done to  
09:35AM 3 evaluate the cause of back pain at the time. He was simply  
09:35AM 4 provided with non-prescription-strength Tylenol.

09:36AM 5 The evidence will show, Your Honor, that at the time  
09:36AM 6 of admission, the veteran had some waxing and waning back  
09:36AM 7 pain. It came and went. But the veteran was able to move all  
09:36AM 8 his limbs freely, get in and out of bed and still get in and  
09:36AM 9 out of a chair. The evidence will show the veteran was, by no  
09:36AM 10 stretch of the imagination, in any acute pain when he was  
09:36AM 11 admitted.

09:36AM 12 Now, on September 10th, Pine Lodge conducted what was  
09:36AM 13 called a falls risk assessment, which revealed that the  
09:36AM 14 veteran was at high risk for falls and that fall prevention  
09:36AM 15 interventions had to be instituted. At that same time, the  
09:36AM 16 veteran was medicated with benzodiazepine and opiates. Two  
09:36AM 17 classes of drugs, you will learn, that are known to cause  
09:36AM 18 adverse effects on the central nervous systems, including  
09:36AM 19 dizziness and confusion. The veteran was not on either one of  
09:36AM 20 those medications before being admitted to Pine Lodge.

09:36AM 21 You will learn that those medications are known to be  
09:37AM 22 very high-risk medication for elderly people. In fact,  
09:37AM 23 they're both what are called consensus list drugs, which are  
09:37AM 24 to be avoided at all cost in the elderly.

09:37AM 25 Indeed, you will learn that the government's own



09:37AM 1 expert will tell us that gen -- that those medications are  
09:37AM 2 generally not to be given to the elderly because they increase  
09:37AM 3 the risk for falling.

09:37AM 4 Less than 15 hours after being admitted to Pine  
09:37AM 5 Lodge, the veteran fell for the first time in his room. A  
09:37AM 6 nurse heard the bed alarm, but by the time she reached his  
09:37AM 7 room halfway down the hall, it was too late. She found him  
09:37AM 8 lying on the floor and noted a long red area on the back of  
09:37AM 9 his upper arm.

09:37AM 10 After the fall, the nurse assessed the veteran's  
09:37AM 11 injuries. She put hip protectors on him and transferred him  
09:37AM 12 back to bed. Even at that time, the veteran was still able to  
09:37AM 13 move to the sitting position on his own and still able to move  
09:37AM 14 all his extremities without any pain. According to their own  
09:38AM 15 records, the veteran slept the rest of that night with no  
09:38AM 16 complaints of back pain.

09:38AM 17 By 10:51 the follow morning, the nurse noted that the  
09:38AM 18 veteran now had complaints of increased low back pain with  
09:38AM 19 moaning with any movement and was now complaining of pain upon  
09:38AM 20 palpation of his low back. Staff reported much difficulty  
09:38AM 21 with transferring him due to pain at the time.

09:38AM 22 Through the afternoon of September 10th, staff  
09:38AM 23 continued to medicate the veteran with Ativan and Lortab, now  
09:38AM 24 a powerful narcotic pain medication. That night, at 2259, it  
09:38AM 25 was noted that the veteran refused all three meals and was

09:38AM 1 incontinent. He continued to experience hypertension, had a  
09:38AM 2 rapid heart rate and rapid respirations. His blood oxygen  
09:38AM 3 saturation began to deteriorate and he was switched to  
09:38AM 4 hydrocodone, an even stronger pain medication. And the  
09:38AM 5 records will show that now, for the first time, he required  
09:39AM 6 the use of supplemental oxygen.

09:39AM 7           You will learn that the next day, on September 11th,  
09:39AM 8 at 1:30, the veteran was again noted to be moaning and  
09:39AM 9 grimacing with pain.

09:39AM 10           THE COURT: Is this a.m. or p.m.?

09:39AM 11           MR. MORATH: This is -- 1330 is p.m., Your Honor.

09:39AM 12           In addition, for the first time, presence of purple  
09:39AM 13 discoloration was noted on his toes. The record, at that  
09:39AM 14 time, reflects that the veteran was lethargic, had diminished  
09:39AM 15 breath sounds and had visible bruises. The morning care staff  
09:39AM 16 noted that the veteran was grimacing and moaning in pain all  
09:39AM 17 day. Narcotics were repeatedly given, but nonetheless, he  
09:39AM 18 continued to moan and said his back hurt for the remainder of  
09:39AM 19 that day.

09:39AM 20           Because of these worsening back complaints, at 1434  
09:39AM 21 on September 11th, a nurse ordered a four-view x-ray of the  
09:40AM 22 veteran's lumbar spine. We will learn that the radiologist  
09:40AM 23 read that x-ray as showing no evidence of a fracture and no  
09:40AM 24 other signs of traumatic injury. The radiologist will tell us  
09:40AM 25 that the vertebral spaces were normal, with the exception of

09:40AM 1 an old surgery. The curvature of his spine was normal. There  
09:40AM 2 was no retropulsion, which means none of the vertebrae were  
09:40AM 3 slipped out of place. Other than degenerative disc disease  
09:40AM 4 and the prior surgery, the radiologist said it was a normal  
09:40AM 5 study.

09:40AM 6 That x-ray, Your Honor, you will learn, was ordered  
09:40AM 7 because of back pain; yet, the technician ordered that a  
09:40AM 8 pelvis x-ray be added simply because of the level of the  
09:40AM 9 veteran's back pain. Now, the radiologist read the first  
09:40AM 10 pelvic x-ray showing a fracture. However, a second x-ray was  
09:40AM 11 taken that did not show a fracture. It was because of these  
09:41AM 12 conflicting hip x-rays that the veteran was transferred to the  
09:41AM 13 VA Hospital for a CT scan of his hip.

09:41AM 14 By the time the veteran was transferred to the  
09:41AM 15 emergency room, he was unable to get out of bed without help.  
09:41AM 16 He was unable to walk and now unable to sit in a chair without  
09:41AM 17 pain. Staff at Pine Lodge will testify that they told the ER  
09:41AM 18 that the veteran's chief complaint was low back pain and that  
09:41AM 19 the veteran had been experiencing back pain for days.

09:41AM 20 The ER will testify, on the other hand, their  
09:41AM 21 staff -- that they did not know anything about the lower back  
09:41AM 22 pain or that he had ongoing complaints of back pain. They  
09:41AM 23 were under the impression that the chief complaint was hip  
09:41AM 24 pain.

09:41AM 25 And you will learn that this is in spite of the fact

09:41AM 1 that the veteran never complained of hip pain. But as a  
09:41AM 2 result, the ER focused solely on the veteran's hip. According  
09:41AM 3 to the nurse's report, the only thing that was done to  
09:41AM 4 evaluate the veteran's back at the hospital was to check for  
09:42AM 5 tenderness or deformity by palpating or pressing on his lower  
09:42AM 6 back and nothing was found. Based on that examination and the  
09:42AM 7 negative CT of the hip, the veteran was cleared back to Pine  
09:42AM 8 Lodge.

09:42AM 9 Now, when Rural Metro arrived at the emergency room,  
09:42AM 10 the paramedics, you will see from their records, were very  
09:42AM 11 concerned that the veteran was not stable enough for transport  
09:42AM 12 back to Pine Lodge. At the emergency room's insistence, the  
09:42AM 13 veteran was transported 35 miles back to Pine Lodge, where he  
09:42AM 14 arrived at 03, still groaning in pain.

09:42AM 15 When he returned to the Pine Lodge from the ER, staff  
09:42AM 16 put the veteran back in the very same room that he was in  
09:42AM 17 before he fell, down the hall and out of the view of the  
09:42AM 18 nursing station. They again immediately give him oxycodone,  
09:42AM 19 another stronger narcotic. You will learn that no additional  
09:42AM 20 protections were put in place. The veteran's room was not  
09:43AM 21 changed. He had not had floor mats added. He did not have a  
09:43AM 22 lower bed added. He did not have a curved mattress added.  
09:43AM 23 They did not even put him back in the hip protectors.

09:43AM 24 And at 5:35 a.m. that morning, barely three hours  
09:43AM 25 after being put back in his room, the veteran fell for a

09:43AM 1 second time. Following the second fall, he had a large  
09:43AM 2 hematoma and swelling on the left side of his forehead. He  
09:43AM 3 was alert and confused and complaining again of back pain.  
09:43AM 4 They noted a red, bruised area on his shoulder blade from the  
09:43AM 5 first fall. He now required a Maxilift, a machine to lift him  
09:43AM 6 and three people to get him back into bed. Soon after this  
09:43AM 7 fall, he was again transferred back to the ER. By 0753 on  
09:43AM 8 September 12th, the veteran was back in the ER with complaints  
09:43AM 9 of 10 out of 10 back pain.

09:43AM 10 He had a large hematoma on his forehead and severe  
09:44AM 11 complaints of neck pain. And upon his admission, numerous  
09:44AM 12 fractures were identified. That admission began an  
09:44AM 13 excruciating decline in his condition. And by September 12th,  
09:44AM 14 after two falls, the record will show that the veteran was now  
09:44AM 15 completely unable to move secondary to pain -- secondary to  
09:44AM 16 back pain.

09:44AM 17 By September 13th, at 1318, the records reflect that  
09:44AM 18 the veteran was experiencing excruciating low back pain, so  
09:44AM 19 much that he was unable to move his legs. And there was a  
09:44AM 20 concern about a possible spinal cord lesion. By  
09:44AM 21 September 16th, at 11:35, records show that the veteran  
09:44AM 22 remained in severe pain involving his back and that a recent  
09:44AM 23 MRI revealed acute compression deformities with edema,  
09:44AM 24 swelling, which the neurologist described as a very painful  
09:44AM 25 condition.

09:44AM 1 The notes reflect that the pain was so severe they  
09:44AM 2 could not control it with the current pain medication. A few  
09:45AM 3 hours later, the records from September 16th state clearly  
09:45AM 4 that the compression fractures at L-1 and L-3 were causing  
09:45AM 5 acute uncontrollable pain. The veteran was switched to the  
09:45AM 6 powerful pain medication Dilaudid and Lidocaine patches were  
09:45AM 7 applied directly to his lumbar spine.

09:45AM 8 At that time, the records tell us, the pain was so  
09:45AM 9 severe that they couldn't even do an MRI of his hip because he  
09:45AM 10 couldn't stand to be in the machine. He was now completely  
09:45AM 11 bedridden and unable to move because of the pain. The records  
09:45AM 12 will also show, by this point, that he developed two stage II  
09:45AM 13 pressure ulcers from being immobile.

09:45AM 14 Soon after, the veteran's blood oxygen levels  
09:45AM 15 desaturated even further and he was found to have a pulmonary  
09:45AM 16 embolism. By 1659 on the 16th of September, the records note  
09:45AM 17 that the veteran was imminently dying from hypoxia related to  
09:46AM 18 his pulmonary embolisms and in acute pain from the lumbar  
09:46AM 19 compression fractures.

09:46AM 20 That same day, it was noted that, in addition to the  
09:46AM 21 CT, x-rays of the shoulder and foot were obtained because of  
09:46AM 22 the falls. The x-ray of the shoulder revealed a suspected  
09:46AM 23 non-displaced glenoid fracture. The foot x-ray revealed  
09:46AM 24 highly suspicious toe fractures.

09:46AM 25 Earlier the next morning, on September 17th, the

1 veteran who walked into Pine Lodge under his own power one  
2 week earlier, was dead. His death certificate notes that a  
3 contributing cause of death was blunt force trauma from a  
4 fall. That veteran, that man, that father, that husband was  
5 Michael Marranco. His daughters, Loretta and Connie, are here  
6 with us today. Michael was seriously and permanently injured  
7 and suffered in pain for eight days, ultimately dying in agony  
8 because the defendants ignored some simple rules.

9           You will learn that after Michael's death,  
10 Dr. Maller, the medical director at Pine Lodge, spoke with the  
11 family and acknowledged the events at Pine Lodge and he  
12 apologized on the facility's behalf. And that is why we're  
13 here today. We're suing the defendant because the staff at  
14 Pine Lodge and the emergency room chose to violate the rules.  
15 We're suing the defendant because, as a result of their  
16 negligence and malpractice, Michael Marranco suffered and died  
17 unnecessarily.

18           But before we'd ask this Court to take a look and  
19 hear Michael's case, we had to determine a few things  
20 ourselves, Your Honor. The first thing we had to determine,  
21 was Pine Lodge negligent for allowing Michael to fall twice in  
22 less than three days? We had to determine if the fall  
23 protection plan that the staff at Pine Lodge put in place was  
24 appropriate.

25           Well, how did we decide that? Well, we retained an

09:47AM 1 expert in the field. And you will hear from Mr. Mark Levine.  
09:47AM 2 Mr. Levine has been a licensing nursing home administrator for  
09:48AM 3 nearly 30 years and has a broad range of knowledge and  
09:48AM 4 experience with both state and federal nursing homes, short  
09:48AM 5 and long-term care facilities and every facility across the  
09:48AM 6 continuum of care. He has extensive experience in managing  
09:48AM 7 facilities that offer multiple levels of care, which is very  
09:48AM 8 important in this case.

09:48AM 9 He served as an administrator for a 120-bed nursing  
09:48AM 10 home, which included a subacute care facility. He has been  
09:48AM 11 the CEO of numerous senior care organizations responsible for  
09:48AM 12 over 600 elderly people and he's participated and managed full  
09:48AM 13 back-to-back compliance initiatives and federal  
09:48AM 14 recertification surveys for newly found facilities.

09:48AM 15 So, Mr. Levine, he reviewed all of the fall  
09:48AM 16 protection plans. He reviewed the process that Pine Lodge  
09:48AM 17 used to evaluate veterans upon admission. He reviewed the  
09:48AM 18 admission criteria and he reviewed the specific steps that  
09:49AM 19 were taken to evaluate and care for Mr. Marranco.

09:49AM 20 And what we discovered and what you will learn  
09:49AM 21 throughout the course of the trial, is that there were  
09:49AM 22 numerous errors made by the facility at the very time of  
09:49AM 23 admission that affected the ultimate level of care that  
09:49AM 24 Mr. Marranco received.

09:49AM 25 In addition, you will learn that the original fall



1 protection plan was minimal at best and did not take into  
2 account at all the recent fall that Mr. Marranco had at home,  
3 the new medications that he was on that were known to increase  
4 dizziness and risk of falls, the fact that he was now being  
5 catheterized for the first time and the fact that he was now  
6 in a new, unfamiliar environment. It failed to consider that  
7 he was experiencing breakthrough pain and it failed to  
8 consider the level of his dementia.

9 You will see it relied on too many passive  
10 protections, such as a light, without even considering whether  
11 a resident with dementia could properly understand or utilize  
12 such a device. It failed to contain some of the most commonly  
13 available and simplest fall protections available.

14 Mr. Levine will also explain that the staff failed to  
15 determine what was causing Mr. Marranco's agitated and  
16 confused state in the first place; anything from hunger,  
17 confusion, fear, infections require attention. Simply  
18 prescribing additional drugs and additional narcotics without  
19 a detailed assessment as to what's going on was improper.

20 With respect to the fall protection plan put in place  
21 after Michael returned from the ER, Judge, you will learn that  
22 one is a no-brainer. The staff at Pine Lodge did not change a  
23 single thing. Even after the fall at home, even after the  
24 first fall at Pine Lodge, the evidence will show that when he  
25 returned from the ER at 3 o'clock in the morning, not a single

09:51AM 1 additional precaution was added to his plan.

09:51AM 2 Contrary to the standard of care that requires the  
09:51AM 3 intensification of a fall plan, once it proves unsuccessful,  
09:51AM 4 you will see that nothing additional was done to prevent that  
09:51AM 5 second fall. It's really that simple. You will find out that  
09:51AM 6 even the defendant's own expert has already testified that  
09:51AM 7 more fall protections were indicated when he returned from the  
09:51AM 8 ER. They were indicated, but they were not put in place.

09:51AM 9 Once we determined, through our investigation, that  
09:51AM 10 the defendant was 100 percent responsible for the falls, we  
09:51AM 11 had to, of course, decide on our own, was he injured in these  
09:51AM 12 falls? And after you see and hear the proof, Your Honor, I  
09:51AM 13 think you will agree that the answer to the question is  
09:51AM 14 probably the simplest one of all. Of course he was injured  
09:51AM 15 when he fell.

09:51AM 16 The first step we had to determine, the first thing  
09:51AM 17 we had to look at, Your Honor, was what injury, if any, did  
09:51AM 18 Michael Marranco have when he arrived at Pine Lodge? We know  
09:52AM 19 he slipped on some stairs on September 5th. And we needed to  
09:52AM 20 figure out, on our own, was there a serious injury and were  
09:52AM 21 there any problems because of it?

09:52AM 22 Now, to do that, you will see we need to look no  
09:52AM 23 further than the defendant's very own records and the  
09:52AM 24 testimony of their own expert. And what we discovered and  
09:52AM 25 what you will learn throughout the course of this trial, is

1 that Mr. Marranco had no serious injury as a result of the  
2 slip down the stairs. When you hear from Paul and Loretta,  
3 you will discover that the day after that fall Mr. Marranco  
4 was seen by a nurse on the 6th. They checked him out  
5 completely and made no mention of injury. Of course, Paul and  
6 Loretta both asked their father repeatedly over the course of  
7 the next four days -- they saw him every day -- if he was  
8 having any problems, any pain, any injuries and their father  
9 assured them that he was not.

10 Of course, you're also going to see the evidence that  
11 he walked into Pine Lodge four days after the fall on his own  
12 with no pain medications, that the initial assessment of pain  
13 was zero and that no signs and symptoms were appreciated  
14 during the exam.

15 Now, on a subsequent initial pain assessment note by  
16 Pamela Stadler, it noted Mr. Marranco was experiencing mild  
17 back pain. Mild. Far from the pain you're going to see  
18 Mr. Marranco experienced after the two falls at Pine Lodge.  
19 Even at that time, the records will clearly show, with the  
20 waxing and waning pain, he was able to ambulate and still  
21 independent with mobility.

22 Now, it's true, you will see, there is one note; one  
23 note at the time of admission, a physical rehabilitation  
24 consult that indicated, at that time, Mr. Marranco had 10 out  
25 of 10 back pain and was complaining of back pain during

transfer and when touched by staff. So, yes, it would appear that on that particular exam, Mr. Marranco had some pain from the fall, but that pain clearly came and went, a fact proven by the defendant's own records. We know that the next set of records you will see, he's back to zero pain. We know that he was still medically stable, still able to walk, still able to move, still able to get in and out of bed and certainly not bedridden in uncontrollable acute pain.

What else will the defendant's own records show us at this trial? On September 9th, before the two falls at Pine Lodge, he was able to ambulate on his own with supervision. After the second fall at Pine Lodge, he was bedridden and never walked again. On September 9th, before the two falls at Pine Lodge, he was independent with bed mobility and transfers. After the two falls at Pine Lodge, he was unable to move, secondary to pain.

On September 9th, before the two falls at Pine Lodge, he was on over-the-counter aspirin. After the two falls at Pine Lodge, his pain could not be controlled with Dilaudid or Lidocaine patches, two of the strongest narcotic pain medications available. On September 9th, before the two falls at Pine Lodge, he was full weight bearing and walked himself into the facility. After the two falls, he never stood again, let alone walked. That is the proof that you will see; not from an expert, from the defendant's own records. Black and

09:55AM 1 white.

09:55AM 2 But perhaps, more telling, Your Honor, is  
09:55AM 3 Dr. Naughton, the defendant's own expert, testified that he  
09:55AM 4 did not feel that Mr. Marranco was seriously injured in the  
09:55AM 5 fall at home. In fact, he testified that the fall at home on  
09:55AM 6 the steps did not represent a significant decline in his  
09:55AM 7 function. You will hear that he felt, "It did not have much  
09:55AM 8 impact on his condition" and that before his admission to Pine  
09:56AM 9 Lodge, Dr. Naughton testified that Mr. Marranco's pain waxed  
09:56AM 10 and waned, but the pain did not compromise his function, his  
09:56AM 11 social interaction or his capacity to eat and drink until  
09:56AM 12 after he was admitted to the hospital.

09:56AM 13 In other words, you're going to hear that the  
09:56AM 14 defendant's own expert will testify that the pain did not  
09:56AM 15 compromise Mr. Marranco's abilities until he fell twice at  
09:56AM 16 Pine Lodge. So, the proof will clearly show that Michael  
09:56AM 17 Marranco's sudden and rapid deterioration and the cause of  
09:56AM 18 those excruciating five days were clearly the result of the  
09:56AM 19 two falls at Pine Lodge and not a trivial fall at home more  
09:56AM 20 than a week earlier.

09:56AM 21 The next thing that we had to determine, Your Honor,  
09:56AM 22 before we came here and before we made allegations directly  
09:56AM 23 against the emergency room staff, was did the emergency room  
09:57AM 24 meet the standard of care when they saw Mr. Marranco after the  
09:57AM 25 first fall at Pine Lodge. And what we discovered and what you

09:57AM 1 will learn is that they simply did not.

09:57AM 2           You will hear from Dr. Schurr, who has spent his  
09:57AM 3 entire career in and around emergency rooms. Since 2004, he  
09:57AM 4 has been the attending physician at the Department of  
09:57AM 5 Emergency Medicine at Memorial Hospital in Rhode Island, at  
09:57AM 6 Yale New Haven Hospital and Brigham and Women's Hospital in  
09:57AM 7 Faulkner. He is a faculty member at the Medical Schools at  
09:57AM 8 Brown, Yale and Harvard, where he teaches in the Department of  
09:57AM 9 Emergency Medicine.

09:57AM 10           And he will testify that the treatment that  
09:57AM 11 Mr. Marranco received at the Buffalo emergency room deviated  
09:57AM 12 from the standards of care for several reasons. First, the  
09:57AM 13 evaluation on September 11th was incomplete. It was limited.  
09:57AM 14 It missed several differential diagnoses and did not even  
09:57AM 15 assess Mr. Marranco's safety to be returned to Pine Lodge,  
09:58AM 16 which was a respite facility, not a skilled nursing facility,  
09:58AM 17 not even a nursing home. They did not have 24-hour medical  
09:58AM 18 care available.

09:58AM 19           What the proof will show is that the emergency  
09:58AM 20 department's evaluation for a hip fracture itself was also not  
09:58AM 21 consistent with the standard of care. Most importantly, the  
09:58AM 22 standard of care required that the source of Mr. Marranco's  
09:58AM 23 pain be identified before he is sent back to Pine Lodge. The  
09:58AM 24 standard of care required that his sudden inability to walk  
09:58AM 25 had to be identified before transporting him back to Pine

09:58AM 1 Lodge.

09:58AM 2 The examination performed at the emergency room did  
09:58AM 3 neither of those. It was inappropriately narrow and focused  
09:58AM 4 solely on the hip, a body part that Mr. Marranco never even  
09:58AM 5 complained was bothering him. The staff merely did the tests  
09:58AM 6 that they were told to do, or that they thought they were  
09:58AM 7 supposed to do and closed the case out.

09:59AM 8 And Dr. Schurr will tell us that, short of admitting  
09:59AM 9 Mr. Marranco to the hospital, the standard of care required,  
09:59AM 10 at the very least, that he be admitted to a skilled nursing  
09:59AM 11 facility with specific orders to evaluate his breathing, his  
09:59AM 12 pain and his ambulation safety.

09:59AM 13 In fact, you will learn, Your Honor, that the  
09:59AM 14 defendant's own physician's assistant agrees. When you hear  
09:59AM 15 from Sean Metz, he was the physician's assistant that did the  
09:59AM 16 phone consult with the nurse on the 11th when Mr. Marranco was  
09:59AM 17 in the emergency room. And Physician Assistant Metz will tell  
09:59AM 18 us that had he been aware that Mr. Marranco had persistent low  
09:59AM 19 back complaints for three days, he would not have agreed to  
09:59AM 20 send him back to Pine Lodge.

09:59AM 21 He will testify that if Mr. Marranco's records, in  
09:59AM 22 fact, document ongoing complaints of back pain and not hip  
09:59AM 23 pain, which we know they do, Mr. Marranco should have been  
09:59AM 24 sent to neurology or rehabilitation before going back to Pine  
10:00AM 25 Lodge. That's the defendant's own treating physician.

1 Now, PA Metz will testify that when he spoke with  
2 Nurse Kowalski from Pine Lodge, he was never told that the  
3 issue was Michael's back or that there was even a lumbar x-ray  
4 and that the chief complaint was back pain. Not surprisingly,  
5 when you hear from Nurse Kowalski, she (sic) will tell you the  
6 opposite; that, of course, she (sic) told the emergency room  
7 about the back pain and of course she (sic) told the emergency  
8 room about the x-ray.

9 Now, clearly, both of those versions cannot be  
10 correct. If Mr. Marranco's properly admitted to the ER, he  
11 doesn't go back to Pine Lodge and he doesn't suffer that  
12 second fall.

13 And that brings us to the last thing that we had to  
14 look at before presenting this case to you, Your Honor. We  
15 had to look and decide what is full and fair compensation for  
16 Michael Marranco's pain and suffering and I touched on this  
17 briefly, but if you'll allow me, I'd like to take a few more  
18 minutes to share some more about what you will hear during  
19 this trial about the pain and suffering Michael endured for  
20 his final seven days.

21 Despite the seriousness of his injuries, the records  
22 clearly establish that he was conscious, fully aware and able  
23 and did, in fact, acknowledge pain up until a few hours before  
24 his death on the 17th. The first fall at Pine Lodge was at  
25 0130 on the 10th. He died at 0140 on the 17th. The records



1 note that, despite excruciating pain, Mr. Marranco remained  
2 alert, awake, his eyes were reflective of the light, he was  
3 able to follow commands. Even in the late hours of  
4 September 16th, just before his death, he was still able to  
5 open his eyes, respond to verbal commands and still expressed  
6 his pain to the nurses.

7 And this, Your Honor, was at a time when his treating  
8 physicians and the defendant's own records state the  
9 following: Unable to move secondary to back pain,  
10 excruciating low back pain, unable to move his legs due to the  
11 severity of pain, pain so severe that the pain is not relieved  
12 with current pain medications, in acute pain from the lumbar  
13 compression fractures. And in the same notes, we see those  
14 descriptions by the defendant's own doctors, we see the  
15 defendant's own doctors acknowledging that he's awake and  
16 alert and complaining.

17 The proof will not only show that the rapid decline  
18 in Michael's health following the two falls at Pine Lodge, it  
19 will clearly demonstrate the severe and excruciating nature of  
20 the suffering he endured as a result of those two falls.

21 Perhaps one of the most important people you will  
22 hear from, Your Honor, will be the first witness this morning,  
23 Loretta. She was with her father in the end. She will  
24 describe what she saw, how her father expressed his pain and  
25 suffered. His final words to her, honey, they hurt me bad.

1 But she will also tell you how her father was before he left  
2 for Pine Lodge, even after that trivial fall at home. And at  
3 the end of this case, you will realize, based on the proof,  
4 there is simply no comparison between his condition on  
5 September 9th and when he was dying in a bed eight days later.

6 There is simply no other credible explanation for  
7 that rapid decline, other than the two falls in three days at  
8 Pine Lodge. And at the end of this trial, Your Honor, after  
9 you have heard all the evidence, I will come back and I will  
10 ask for an amount of money that right now may sound high, but  
11 by the time you hear the proof, I truly believe you will feel  
12 that it is the proper amount for this type of case. Thank  
13 you.

14 MS. FLEMING: Good morning. May it please the Court,  
15 Ms. Greasley and counsel.

16 Michal J. Marranco was 87 years old at the time of  
17 his admission to Pine Lodge, which is a VA community living  
18 center in Batavia, New York. Pine Lodge is a secure dementia  
19 unit where most of its residents remain long term, at least in  
20 that same 2013. Four of the beds were designated for respite  
21 care, which provides families of veterans such as Mr. Marranco  
22 with a break from caregiving.

23 Mr. Marranco was diagnosed with what is known as  
24 frontal temporal dementia, which made him act impulsively at  
25 times and increased his risk for falls. He also had had a

1 number of illnesses which required him to take 11 medications  
2 and also increased his risk for falls.

3 Mr. Marranco had multiple falls before he was ever  
4 admitted to Pine Lodge. The first known fall caused a  
5 compression fracture in Mr. Marranco's spine at L-3 and  
6 required him to undergo what is known as kyphoplasty surgery  
7 back in 2007. The second known fall occurred in July of 2013,  
8 while Mr. Marranco was vacationing in Florida. Mr. Marranco  
9 fell in the bathroom while showering. He took the shower  
10 curtain down when he fell and he sustained an injury to his  
11 flank. 911 was called and Mr. Marranco was evaluated by  
12 emergency medical personnel. He refused further treatment.

13 You will hear testimony from one of his home health  
14 care providers, NP -- nurse practitioner Kevin Hennessy. He  
15 will testify that he performed an annual physical of  
16 Mr. Marranco on July 25, 2013. At that annual physical, Nurse  
17 Practitioner Hennessy learned, for the first time, that -- of  
18 the fall in Florida that had occurred three weeks earlier and  
19 involved the injury to Mr. Marranco's flank side.

20 Mr. Marranco, at that time, three weeks later, still had  
21 bruising from the accident in that area.

22 The third known fall occurred the day prior to  
23 admission at Pine Lodge and involved Mr. Marranco's back. The  
24 fall occurred at the Marranco home on Linden Avenue in  
25 Buffalo, in the area of the side door. After you enter the

10:07AM 1 home, there are three to four steps that lead up to the  
10:07AM 2 kitchen and then, there are steps on the left of the stairway  
10:07AM 3 that lead down to the basement. Mr. Marranco, at the time,  
10:07AM 4 lived in the home with his wife, his daughter Loretta and her  
10:07AM 5 husband at the time Mark and his son Paul.

10:07AM 6 While no family member witnessed the fall on the day  
10:07AM 7 preceding his admission to Pine Lodge, the proof will show  
10:07AM 8 that Mr. Marranco fell either walking up the stairs to the  
10:07AM 9 kitchen and fell backward, landing with his back against the  
10:07AM 10 side door, or he fell down the stairs, after exiting the  
10:07AM 11 kitchen, landing in the same fashion. Mr. Marranco was found  
10:07AM 12 with his back against the door, leaning, squatting or sitting  
10:07AM 13 against the door and may have had to remain in this position  
10:07AM 14 for a period of time until either Paul or Loretta's husband  
10:08AM 15 Mark was able to lift him.

10:08AM 16 Paul Marranco testified that Mr. -- that his father  
10:08AM 17 had a mark on his back after this fall. Mr. Marranco was not  
10:08AM 18 taken for medical treatment after this fall, but his family  
10:08AM 19 took him to Pine Lodge the next day. Mr. Marranco was  
10:08AM 20 admitted to Pine Lodge on September 9th, 2013.

10:08AM 21 You will hear testimony from Nurse Practitioner Jamie  
10:08AM 22 Kowalski, who admitted Mr. Marranco. When Nurse Practitioner  
10:08AM 23 Kowalski evaluated Mr. Marranco for admission, he was told for  
10:08AM 24 the very first time about the fall that Mr. Marranco had right  
10:08AM 25 before admission. NP Kowalski was told by Mr. Marranco's son

1 Paul that Mr. Marranco was unable to get himself up after the  
2 fall and had to lay on the floor until he was picked up.

3 NP Kowalski was also told that Mr. Marranco had, at  
4 that time, an increase in urinary incontinence, wheezing with  
5 exertion and complained of back pain after the fall. NP  
6 Kowalski prescribed Tylenol or acetaminophen what is known as  
7 PRN, or when needed, for Mr. Marranco's back pain and an  
8 inhaler for the wheezing.

9 Mr. Marranco was admitted to Pine Lodge for a two-  
10 week respite period. Pine Lodge has 24/7 nursing care  
11 available. Pine Lodge has a medical doctor, a psychologist,  
12 mid-level providers such as a nurse practitioner, registered  
13 nurses, occupational therapist, physical therapist, dietician,  
14 social worker, recreational therapist, as well as licensed  
15 practical nurses and home health care aides.

16 While Pine Lodge does not have the capability to  
17 provide all of the health care services a hospital can  
18 provide, it has nursing staff on duty at all times. Pine  
19 Lodge is not an unskilled facility. Pine Lodge also does not  
20 have the requirement to write progress notes as frequently as  
21 a hospital provider does. Pine Lodge providers are not  
22 required to write daily progress notes unless there is a  
23 change in the resident's condition or other notable events.

24 While Mr. -- when Mr. Marranco was admitted to Pine  
25 Lodge, he was evaluated for fall risk and was immediately

1 identified as being at high risk for falls. He was placed on  
2 a fall risk prevention program, which included his bed being  
3 placed in the low position, use of a call light, bed and chair  
4 alarms, conducting hourly surveys on rounds, monitoring him  
5 closely and assisting him with ambulation as needed, among  
6 other fall risk prevention measures.

7 Defendant's expert, Dr. Bruce Naughton, a Board-  
8 Certified Internal Medicine physician with a certificate of  
9 added qualification in geriatric medicine will opine that the  
10 VA fall risk prevention program was reasonable and appropriate  
11 and met the standard of care.

12 You will hear testimony today from registered nurses  
13 Sherry Webster and Pamela Stadler, who evaluated Mr. Marranco  
14 for fall risk and were treating Mr. Marranco on September 9th.  
15 Nurse -- before any fall occurred at Pine Lodge. Nurse  
16 Stadler will testify that on September 9, 2013, Mr. Marranco  
17 was guarding, grimacing and moaning as a result of pain in his  
18 lower back and that the pain was new and began on September 8,  
19 2013 because of a fall.

20 The VA medical records from September 9 will reveal  
21 that Mr. Marranco was complaining of back pain, at times 10  
22 out of 10 and he yelled out even when touched. All of these  
23 complaints occurred before any fall at Pine Lodge.

24 The proof will show that Mr. Marranco's condition of  
25 frontal temporal dementia may not make him the best evaluator

1 of pain and that he was unable, on many occasions, to describe  
2 his pain. So, the notation 99 was often used by nursing staff  
3 to reflect this inability. The VA medical records will also  
4 reveal that Mr. Marranco was unable to bear his weight and  
5 required a two-person assist when transferring before any fall  
6 occurred at Pine Lodge.

7           Unfortunately, Mr. Marranco had a fall on  
8 September 10, 2013, which was witnessed by Registered Nurse  
9 Barbara Crispell, who was the RN on duty during under the  
10 overnight shift at Pine Lodge. Mr. Marranco's bed alarm went  
11 off and he fell on his right side on some urine. After the  
12 fall, Mr. Marranco asked Registered Nurse Crispell, why is  
13 that man in my room? Mr. Marranco, at the time, was in a four  
14 bedroom at Pine Lodge.

15           RN Crispell will testify that she observed a long red  
16 area on the back of his upper right arm, but no other injuries  
17 were noted. Mr. Marranco was able to move to a sitting  
18 position independently and was able to move all extremities  
19 without pain. Hipsters were added to his fall risk prevention  
20 measures. After the fall, when Mr. Marranco continued to  
21 complain of pain, lumbar spine and hip x-rays were done in an  
22 attempt to determine the source of Mr. Marranco's pain.

23           You will watch the videotaped testimony of  
24 Dr. Michele Cook, a former VA radiologist, regarding the hip  
25 and lumbar spine x-rays. No fracture was observed on the

10:13AM 1 lumbar spine x-rays and the hip x-rays were inconclusive as to  
10:14AM 2 fracture -- as to whether or not Mr. Marranco had a fracture  
10:14AM 3 in his left hip. Dr. Cook observed that Mr. Marranco had  
10:14AM 4 degenerative disc disease, which is chronic and long standing.

10:14AM 5 Because of these inconclusive hip x-rays, orthopedic  
10:14AM 6 Physician's Assistant Sean Metz, who will be testifying at  
10:14AM 7 this trial, was asked by Nurse Practitioner Kowalski whether  
10:14AM 8 Mr. Marranco should be transferred to the Buffalo VAMC for  
10:14AM 9 what is known as computerized tomography, also known as a CT  
10:14AM 10 scan of the hip. A CT scan is better than an x-ray to  
10:14AM 11 determine a fracture. PA Metz will -- Physician's Assistant  
10:14AM 12 Metz will testify at this trial that he recommended a CT scan  
10:14AM 13 be done of Mr. Marranco's left hip due to the conflicting  
10:14AM 14 x-rays of the hip.

10:14AM 15 When Mr. Marranco arrived at the Buffalo VAMC  
10:15AM 16 emergency room, he was treated by Nurse Practitioner Nancy  
10:15AM 17 Arbeiter. She will also be testifying at this trial. Nurse  
10:15AM 18 Practitioner Arbeiter will testify that she has an independent  
10:15AM 19 recollection of Mr. Marranco. She recalls that he was sitting  
10:15AM 20 up, hungry and not acutely ill appearing. His vital signs  
10:15AM 21 were stable and when his back was palpated, she noted that he  
10:15AM 22 had no bony tenderness or deformity. Mr. Marranco made no  
10:15AM 23 complaint of pain to Nurse Practitioner Arbeiter and  
10:15AM 24 therefore, he was given no pain medications by her.

10:15AM 25 After the CT scan showed no hip fracture, the



1 decision was made by PA Metz and NP Arbeiter to send  
2 Mr. Marranco back to Pine Lodge, where there was round-the-  
3 clock nursing care available.

4 Unfortunately, the ambulance crew took two hours to  
5 arrive. The ambulance crew expressed some concern about  
6 transporting Mr. Marranco and whether he was medically stable.  
7 Ultimately, their concerns were addressed and the transport  
8 commenced without incident. The ambulance crew noted that  
9 Mr. Marranco's vital signs returned closer to normal upon  
10 arrival at Pine Lodge. Mr. Marranco did not arrive back to  
11 Pine Lodge until 3 a.m. on September 12th.

12 Both of the defendants experts, Dr. John Leddy, a  
13 Board-Certified Internal Medicine physician with a  
14 subspecialty in sports medicine and Dr. Bruce Naughton will  
15 opine that the decision to transfer Mr. Marranco back to Pine  
16 Lodge was reasonable and appropriate, since Mr. Marranco had  
17 no hip fracture, was stable and was being transferred back to  
18 a facility with 24/7 nursing care.

19 Registered Nurse Barbara Crispell was the nurse on  
20 duty at the time Mr. Marranco arrived back at Pine Lodge.  
21 Mr. Marranco was again determined to be at high risk for a  
22 fall and all of the previous fall risk prevention measures  
23 were put in place, including hipsters. Unfortunately,  
24 Mr. Marranco fell again two and a half hours later.  
25 RN Crispell heard the bed alarm and by the time she arrived in

1 Mr. Marranco's room, he had already fallen and was found on  
2 his right side.

3 He had bruises also on his left upper forehead.

4 Mr. Marranco had a small abrasion on his right upper armpit  
5 and a small pinpoint area on his left upper leg, near his  
6 groin. The defendant's expert, Dr. Bruce Naughton will  
7 concede that more could have been done by the VA to reduce  
8 Mr. Marranco's fall risk when he returned to Pine Lodge.

9 The decision was then made to transfer Mr. Marranco  
10 to the Buffalo VA Hospital on September 12, 2013. Nobody  
11 argues that the transfer back to the Buffalo VAMC was  
12 inappropriate. He was treated by a number of treating  
13 physicians, including Dr. Sherry Withiam-Leitch, who is a  
14 Board-Certified Neurologist and Chief of Neurology at the  
15 Buffalo VAMC. Dr. Withiam-Leitch was not disclosed as an  
16 expert by the plaintiff and is testifying as a fact witness  
17 only at this trial.

18 Dr. Withiam-Leitch was consulted to evaluate whether  
19 Mr. Marranco has what is known as normal pressure  
20 hydrocephalus, which is a swelling of the ventricles in the  
21 brain. She determined that he did not, after performing a  
22 number of neurological tests and reviewing a CT of his head.  
23 She will testify that she was able to test Mr. Marranco's gait  
24 and that he was able to walk but he had many neurological  
25 issues, which increased his risk for falling.

1 You will also hear testimony from Dr. Jaclyn  
2 Schneider, who is a Board-Certified physician in Internal  
3 Medicine and Hospice Palliative Care Medicine and the Chief of  
4 Palliative Medicine at the Buffalo VAMC. On September 16,  
5 2013, Dr. Schneider treated Mr. Marranco for end-of-life  
6 issues. Again, Dr. Schneider was not disclosed as an expert  
7 for the plaintiff and will be testifying as a fact witness  
8 only.

9 Dr. Schneider will testify that she met with  
10 Mr. Marranco's family on September 16, 2013 and who -- and the  
11 family determined that the goals of any treatment should be  
12 comfort-oriented. Dr. Schneider ensured that Mr. Marranco was  
13 as comfortable as possible. Neither of these treating  
14 physicians, Dr. Schneider or Dr. Withiam-Leitch, formed any  
15 opinion as to the cause of Mr. Marranco's injuries, including  
16 the compression fracture and will testify to this.

17 You will hear testimony about a magnetic resonance  
18 imaging, MRI, that was performed on September 14, 2013, which  
19 showed a mild compression fracture in Mr. Marranco's spine at  
20 L-1. Plaintiff asserts that because Mr. Marranco's earlier  
21 lumbar spine x-ray showed no fracture on September 11, 2013,  
22 this compression fracture must have occurred as a result of  
23 one of the two falls at Pine Lodge. Expert testimony will not  
24 support this conclusion, however.

25 Plaintiff's experts, Dr. Jeremiah Schurr and Mr. Mark

1 Levine, nursing home administrator, have been precluded from  
2 testifying as to causation in this case.

3 Defendants' expert Dr. John Leddy will testify to the  
4 following: That a mild compression fracture may not be  
5 visible on a plain x-ray, that a person can ambulate with a  
6 mild compression fracture. So, even though Mr. Marranco could  
7 ambulate on admission, he could have had a compression  
8 fracture at that time; that a person such as Mr. Marranco  
9 could be asymptomatic and experience little or no pain with a  
10 mild compression fracture; that a mild compression fracture  
11 can be missed on palpation.

12 So, when NP Arbeiter palpated Mr. Marranco's back on  
13 September 11, 2013, he could have had a mild compression  
14 fracture. And finally, it's impossible to determine exactly  
15 when the L-1 compression fracture occurred, based upon the MRI  
16 alone, particularly when Mr. Marranco suffered four falls  
17 within days to several weeks of his admission to Pine Lodge.  
18 Therefore, the plaintiff will not be able to establish the  
19 cause of Mr. Marranco's L-1 compression fracture and his  
20 lumbar spine pain.

21 Throughout the time Mr. Marranco was admitted to Pine  
22 Lodge, into the Buffalo VAMC, Mr. Marranco's pain was treated  
23 by medication, including Tylenol, Lortab, hydrocodone and  
24 oxycodone. You will hear about some of these medications  
25 increasing Mr. Marranco's risk for falls. However, you will

1 also hear testimony that Mr. Marranco's pain was reasonable  
2 and -- that treating Mr. Marranco's pain was reasonable and  
3 appropriate and that pain management was a paramount concern  
4 for the VA providers.

5 While plaintiff alleges that Mr. Marranco suffered  
6 two fractured toes and a fractured shoulder socket, x-rays  
7 taken of Mr. Marranco's toes and shoulders do not confirm  
8 these fractures. And Mr. Marranco had few, if any, complaints  
9 of pain regarding his toes and shoulder.

10 You will hear testimony from four experts;  
11 plaintiff's experts Dr. Jeremiah Schurr and Mark Levine,  
12 nursing home administrator, have been precluded from rendering  
13 opinions on medical causation. Mr. Levine is not a medical  
14 doctor and has admitted that he does not have the professional  
15 background to render any standard of care opinions as they  
16 relate to the clinical care provided by the medical  
17 professionals in this case.

18 You will also hear testimony from the defendant's  
19 experts, Dr. Leddy and Dr. Naughton. All of these experts  
20 agree that preventing or reducing the number of falls in a  
21 health care facility such as Pine Lodge is a challenge and  
22 that falls can occur in the absence of negligence.

23 Finally, plaintiff's counsel has indicated that he  
24 was calling a witness Dr. Mark Maller, who is the community  
25 living center section chief and medical doctor. Dr. Maller,

10:23AM 1 again, is being called as a fact witness on behalf of the  
10:23AM 2 plaintiff and not as an expert. Dr. Maller did not  
10:24AM 3 participate directly in Mr. Marranco's care.

10:24AM 4 Plaintiff's counsel has indicated that Dr. Maller may  
10:24AM 5 testify about a partially tape-recorded call made by Loretta  
10:24AM 6 Greasley and Paul Marranco to him after Mr. Marranco died.  
10:24AM 7 The proof will show that Dr. Maller's off-the-cuff comment was  
10:24AM 8 made without the benefit of a careful review of the entire  
10:24AM 9 medical record and was outside of his care and treatment.

10:24AM 10 The proof will further show that the remark is not a  
10:24AM 11 reliable admission as to the cause of Mr. Marranco's mild  
10:24AM 12 compression fracture at L-1. The proof will show that there  
10:24AM 13 was no deviation from the standard of care or legal duty -- or  
10:24AM 14 breach of legal duty. Even if there was a deviation, the  
10:24AM 15 proof will show that this deviation or breach did not cause  
10:24AM 16 Mr. Marranco's injuries.

10:24AM 17 While you will hear testimony from Dr. Schuur  
10:25AM 18 regarding alleged deviations from the standard of care on the  
10:25AM 19 part of the VA, he will not be testifying as to whether any of  
10:25AM 20 those deviations caused Mr. Marranco's injuries. Simply  
10:25AM 21 because Mr. Marranco had pain in his lumbar spine and he  
10:25AM 22 compensated after his arrival at Pine Lodge does not mean that  
10:25AM 23 the VA's negligence caused Mr. Marranco's unfortunate downward  
10:25AM 24 spiral, Mr. Marranco's pre-existing degenerative joint or disc  
10:25AM 25 disease, which was chronic and not the result of any fall at

10:25AM 1 Pine Lodge and plaintiffs simply have no proof as to the cause  
10:25AM 2 of Mr. Marranco's underlying L-1 compression fracture.

10:25AM 3 There will be proof that Mr. Marranco was in pain at  
10:25AM 4 times, sometimes severe, during the course of his stay at Pine  
10:25AM 5 Lodge and subsequent hospitalizations. In fact, the proof  
10:25AM 6 will show that when Mr. Marranco arrived on September 9 at  
10:25AM 7 Pine Lodge and before he ever fell at Pine Lodge, he had  
10:26AM 8 complaints of pain as high as 10 out of 10, difficulty  
10:26AM 9 supporting his own weight and ambulating and difficulty  
10:26AM 10 breathing.

10:26AM 11 Therefore, plaintiff will fail to prove to  
10:26AM 12 demonstrate how the defendant's actions caused or contributed  
10:26AM 13 to Mr. Marranco's pain and suffering. As a result, at the  
10:26AM 14 close of the plaintiff's proof, we will ask for judgment in  
10:26AM 15 favor of the defendant. Thank you, Your Honor.

10:26AM 16 THE COURT: All right. We'll take a 10-minute recess  
10:26AM 17 and then we'll call the first witness. Court will be in  
10:26AM 18 recess.

10:26AM 19 THE CLERK: All rise.

10:37AM 20 (Brief recess)

10:37AM 21 THE CLERK: All rise. You may be seated.

10:39AM 22 THE COURT: All right. First witness, please.

10:39AM 23 MR. MORATH: Your Honor, may we put the stipulated  
10:39AM 24 exhibits in first?

10:39AM 25 THE COURT: All right.

10:39AM 1 MR. MORATH: This is all off of the Joint Exhibit  
10:39AM 2 list and the following exhibits counsel have agreed to  
10:39AM 3 stipulate into evidence: Exhibit Number 7, Exhibit Number  
10:39AM 4 8 --

10:39AM 5 THE COURT: These are Joint Exhibits?

10:39AM 6 MR. MORATH: Correct, Judge.

10:39AM 7 THE COURT: Just a minute. All right.

10:39AM 8 MR. MORATH: 7, 8, 9, 22, 24, 27, 29, 30, 31, 32, 33,  
10:40AM 9 34, 35, 36, 37, 38, 39, 44, 45, 47, 47A, 47B, 47C, 48 for the  
10:40AM 10 following dates, 9/11/13, 9/12/13, 9/13/13.

10:40AM 11 THE COURT: 9/11. What's the other one?

10:40AM 12 MR. MORATH: The 11th, the 12th, 13th, the 14th and  
10:40AM 13 the 15th of September, 2013. Those are dates of films.  
10:41AM 14 Exhibit 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58.

10:41AM 15 THE COURT: Just for the record, what are all these  
10:41AM 16 exhibits? What are they?

10:41AM 17 MR. MORATH: Did you want to know --

10:41AM 18 THE COURT: Well, just generally, just so I have  
10:41AM 19 some --

10:41AM 20 MR. MORATH: Mostly medical records, Your Honor.

10:41AM 21 THE COURT: These are all medical records? Okay.

10:42AM 22 MR. MORATH: Mostly medical records and radiology  
10:42AM 23 notes and reports. The only thing that really is not medical  
10:42AM 24 is the experts' CVs and --

10:42AM 25 THE COURT: The what?



MR. MORATH: The experts' resumes and then a couple procedure manuals from the facility, a pain management manual and a falls protection manual. The rest of it is medical related.

THE COURT: All right.

(Joint Exhibits 7, 8, 9, 22, 24, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 44, 45, 47, 47A, 47B, 47C, 48 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 were received in evidence.)

MR. MORATH: The plaintiff calls Loretta Greasley.

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Loretta Greasley, G-R-E-A-S-L-E-Y.

THE CLERK: And is Loretta, L-O-R-E-T-T-A?

THE WITNESS: Yes.

THE CLERK: Thank you.

(The witness was sworn at 10:43 a.m.)

MR. MORATH: May I proceed, Your Honor?

THE COURT: Yes, please.

#### DIRECT EXAMINATION

BY MR. MORATH:

Q. Good morning, Loretta.

A. Good morning.

10:43AM 1 Q. Loretta, was Michael Marranco your father?

10:43AM 2 A. Yes, he was.

10:43AM 3 Q. Can you tell us your father's full name?

10:43AM 4 A. Michael Jerry Marranco.

10:43AM 5 Q. And where was your father born?

10:43AM 6 A. Pittston, Pennsylvania.

10:43AM 7 Q. How old was he when he passed away?

10:44AM 8 A. Eighty-seven.

10:44AM 9 Q. My understanding, your father was in the Navy during

10:44AM 10 World War II?

10:44AM 11 A. Yes, he was.

10:44AM 12 Q. Did he serve in combat?

10:44AM 13 A. Yes.

10:44AM 14 Q. What did he do after the military?

10:44AM 15 A. He worked at the Chevy plant in Buffalo.

10:44AM 16 Q. And how long did he work there?

10:44AM 17 A. Forty years.

10:44AM 18 Q. Is that where he retired from?

10:44AM 19 A. Yes.

10:44AM 20 Q. And when did he retire?

10:44AM 21 A. Many, many years ago. I don't remember the date.

10:44AM 22 Q. Was it a significant period of time before --

10:44AM 23 A. Way before.

10:44AM 24 Q. -- before September 2013?

10:44AM 25 A. Oh, yes.

10:44AM 1 Q. What's your mom's name?

10:44AM 2 A. Josephine Marranco.

10:44AM 3 Q. And how long were mom and dad married?

10:44AM 4 A. 67, 68 years.

10:44AM 5 Q. Sixty-eight years?

10:44AM 6 A. Yes.

10:44AM 7 Q. How many children did they have?

10:44AM 8 A. Four.

10:44AM 9 Q. Can you tell us their names?

10:44AM 10 A. My oldest sister is Josie, Josephine Nila; my sister

10:45AM 11 Connie, Concetta Grant; my brother Paul Marranco and myself.

10:45AM 12 Q. And Connie is here with us today?

10:45AM 13 A. Yes.

10:45AM 14 Q. Now, I understand your brother Paul was the original

10:45AM 15 executor of your father's estate?

10:45AM 16 A. Yes, he was.

10:45AM 17 Q. And when did Paul pass away?

10:45AM 18 A. Last year, November 29th.

10:45AM 19 Q. At that point, you were substituted as executor of the

10:45AM 20 estate?

10:45AM 21 A. Yes.

10:45AM 22 Q. In 2013, where did mom and dad live?

10:45AM 23 A. 643 Linden.

10:45AM 24 Q. Is that in Buffalo?

10:45AM 25 A. Yes.

10:45AM 1 Q. Did they own that home?

10:45AM 2 A. Yes, that was our family home.

10:45AM 3 Q. How long had they owned it?

10:45AM 4 A. Probably about 50 years.

10:45AM 5 Q. Is that the home you grew up in?

10:45AM 6 A. Yes.

10:45AM 7 Q. And Paul grew up there with you as well?

10:45AM 8 A. Yes.

10:45AM 9 Q. Were you living with your parents in 2013?

10:45AM 10 A. Yes.

10:45AM 11 Q. And how long had you been living with your parents?

10:46AM 12 A. I moved there in 2007.

10:46AM 13 Q. And who else lived there in 2007?

10:46AM 14 A. My husband Mark, my brother Paul and my parents.

10:46AM 15 Q. Okay. Can you explain to us how the house was set up

10:46AM 16 where you lived?

10:46AM 17 A. Sure. It's a double. And it was -- the first floor was

10:46AM 18 my parents, the basement apartment was my brother and I had

10:46AM 19 the apartment on the second floor with my husband.

10:46AM 20 Q. And why did you move in in 2007?

10:46AM 21 A. To help take care of them.

10:46AM 22 Q. Your mom and dad?

10:46AM 23 A. Yes.

10:46AM 24 Q. Now, how involved were you in your dad's life from 2007

10:46AM 25 up to 2013?

10:46AM 1 A. I was very involved, see him every day. We lived in the  
10:46AM 2 house. We lived there.  
10:46AM 3 Q. You said you see him every day?  
10:46AM 4 A. Yes. Every day.  
10:46AM 5 Q. And how was your relationship with your dad?  
10:46AM 6 A. It was wonderful.  
10:46AM 7 Q. And did the frequency of seeing your dad, did it change  
10:47AM 8 at all? Did you still see him every day in 2013?  
10:47AM 9 A. Yes.  
10:47AM 10 Q. And how was it that you'd see him every day?  
10:47AM 11 A. We lived in the same home, so I took care of, you know, I  
10:47AM 12 went down there, made sure they ate their meals, their  
10:47AM 13 medicine, just, you know, being we were very close. We were  
10:47AM 14 always together.  
10:47AM 15 Q. And how often did the family -- everybody was living in  
10:47AM 16 the home all together?  
10:47AM 17 A. Well, we had dinner every night for sure. That was  
10:47AM 18 something that we took pride in, my brother, myself and my  
10:47AM 19 mom and dad.  
10:47AM 20 Q. And based upon your observations of your dad and being  
10:47AM 21 around your dad so often, was he open with you about the way  
10:47AM 22 he was feeling?  
10:47AM 23 A. Oh, yeah. He told me everything.  
10:47AM 24 Q. Could you tell, based on your familiarity with him, if  
10:47AM 25 something was bothering him?

10:47AM 1 A. Yes.

10:47AM 2 Q. And how could you tell if something was bothering him?

10:47AM 3 A. He would tell me.

10:47AM 4 Q. In the event that he didn't tell you, was there anything

10:48AM 5 you could see that would let you know that something was

10:48AM 6 wrong?

10:48AM 7 A. Yeah. I mean, if he had a stomach ache, he would tell

10:48AM 8 me. If he had a headache, I could tell. You know, he would

10:48AM 9 be a little different, but he --

10:48AM 10 Q. How could you tell on your own if there was something

10:48AM 11 bothering him?

10:48AM 12 A. By his expression, the way he, you know, he sat on his

10:48AM 13 chair and sat at the kitchen table.

10:48AM 14 Q. And if your dad was experiencing any pain, were you able

10:48AM 15 to tell?

10:48AM 16 A. Yes.

10:48AM 17 Q. How could you tell if he was experiencing pain?

10:48AM 18 A. He would tell me if he was in pain and he would just, you

10:48AM 19 know -- if someone is in pain, you can tell by their facial

10:48AM 20 expression.

10:48AM 21 Q. What type of facial expression would you see that let you

10:48AM 22 know something was going on with your dad?

10:48AM 23 A. He would hold his head or, you know, be sad.

10:49AM 24 Q. Were you familiar with his general medical conditions and

10:49AM 25 his general health in 2013?

10:49AM 1 A. Yes. I was the -- his main caregiver.

10:49AM 2 Q. And what do you mean by that?

10:49AM 3 A. I took him to all his doctors' appointments. I was there  
10:49AM 4 for his doctors' appointments. I took care of his -- if he  
10:49AM 5 needed batteries for his hearing aids, if he needed a  
10:49AM 6 prescription. I set up the prescriptions all the time, like  
10:49AM 7 in a weekly container.

10:49AM 8 Q. And how would you describe his general health in 2013?

10:49AM 9 A. He was great. He was fine.

10:49AM 10 Q. What do you mean by that?

10:49AM 11 A. He did all his chores. He was -- he had a routine. He  
10:49AM 12 would throw out the garbage. He was a happy man. I mean, he  
10:49AM 13 watched his sports. He loved my mother. He was -- nothing  
10:49AM 14 changed. He was just a happy man.

10:50AM 15 Q. You said he had his routine. Can you tell us a little  
10:50AM 16 bit about your dad's daily routine in 2013?

10:50AM 17 A. Sure. He would -- well, from having breakfast, he would  
10:50AM 18 eat by himself and lunch and dinner. You know, he would --  
10:50AM 19 he'd -- I'd probably get his breakfast, lunch and dinner and  
10:50AM 20 he would eat them. He didn't need help feeding himself or  
10:50AM 21 anything like that. He would watch TV. He would watch his  
10:50AM 22 game shows in the afternoon and at night he would watch  
10:50AM 23 his -- anything that played sports, he loved to watch.

10:50AM 24 He had to vacuum every day. My mother insisted on it.

10:50AM 25 And he also had a thing about the garbage. He had to throw

10:50AM 1 the garbage out. He didn't want any garbage in the back  
10:50AM 2 hall. So, that was his chore. He'd take the garbage out  
10:50AM 3 every day.

10:50AM 4 Q. Your dad vacuumed the house every day?

10:50AM 5 A. My mother was obsessed with it.

10:50AM 6 Q. And you mentioned a little bit of his abilities, his  
10:51AM 7 physical abilities. Were you familiar with the things that  
10:51AM 8 your dad could physically do in 2013?

10:51AM 9 A. Yes.

10:51AM 10 Q. Can you tell us some of the things he was able to do  
10:51AM 11 physically? You mentioned the vacuuming. What else could he  
10:51AM 12 do physically?

10:51AM 13 A. He took care of himself totally independently. He was  
10:51AM 14 brushing his teeth, washing up every day, combing his hair,  
10:51AM 15 getting dressed and there wasn't much he couldn't do. He did  
10:51AM 16 everything independently.

10:51AM 17 Q. Now, your father was diagnosed with dementia?

10:51AM 18 A. Yes.

10:51AM 19 Q. Do you remember when that was he was originally  
10:51AM 20 diagnosed?

10:51AM 21 A. No, I don't.

10:51AM 22 Q. And in the year 2013, did you observe any changes in his  
10:51AM 23 mental status, in his dementia?

10:51AM 24 A. He -- his mental -- his dementia was getting a little  
10:51AM 25 worse, but he was physically fine.



10:52AM 1 Q. So, the time period, let's say of 2013, you mentioned his  
10:52AM 2 dementia was getting a little worse. What, if any, changes  
10:52AM 3 did you notice to his physical abilities in 2013?  
10:52AM 4 A. There weren't any. He didn't have any.  
10:52AM 5 Q. Now, you mentioned you took your dad to the doctors?  
10:52AM 6 A. Yes.  
10:52AM 7 Q. And where did he go for his appointments in 2013?  
10:52AM 8 A. He went to the VA.  
10:52AM 9 Q. Do you know how long he had been going to the VA for his  
10:52AM 10 medical care?  
10:52AM 11 A. Probably about five, six years.  
10:52AM 12 Q. For these five, six years, did he receive medical care  
10:52AM 13 anywhere that you're aware of outside of the VA?  
10:52AM 14 A. No. Once we started going to the VA, it was all we had.  
10:52AM 15 Q. And I understand that your dad also had some nurses and  
10:52AM 16 perhaps others from the VA visit him at his home?  
10:52AM 17 A. Yes.  
10:52AM 18 Q. And how often did that occur?  
10:53AM 19 A. A couple times a month.  
10:53AM 20 Q. And can you tell us how that process worked? Did he have  
10:53AM 21 scheduled appointments? Did he call? How did you --  
10:53AM 22 A. He would schedule appointments. We had -- yeah. He had  
10:53AM 23 like, a calendar that we put the doctors' appointments on.  
10:53AM 24 And if we needed them for anything else, we would call.  
10:53AM 25 Q. So, they came a couple times a month, but if you needed

10:53AM 1 something additional, you would call them?

10:53AM 2 A. Yes.

10:53AM 3 Q. And was there specific nurses that routinely came there?

10:53AM 4 A. There were mainly just two that came.

10:53AM 5 Q. And who were the two that mainly came?

10:53AM 6 A. Kevin Hennessy and Theo -- I can't recall his last name.

10:53AM 7 Q. Theo?

10:53AM 8 A. Theo.

10:53AM 9 Q. Were you there for the visits?

10:53AM 10 A. Yes. And if I couldn't be there, I was -- I tried to be

10:53AM 11 there for every one of them. My brother and I would be

10:53AM 12 there.

10:53AM 13 Q. And what types of things would they do at those visits?

10:54AM 14 A. They would always take his blood pressure, make him walk

10:54AM 15 a little bit, have him bend over towards his toes, sit in a

10:54AM 16 chair, get up and down.

10:54AM 17 Q. And that would be done at every visit that you were there

10:54AM 18 for?

10:54AM 19 A. That's right.

10:54AM 20 Q. And did your dad ever have one of those visits without

10:54AM 21 either you or your brother being present?

10:54AM 22 A. Not of my knowledge, no.

10:54AM 23 Q. I want to focus specifically on the few weeks, say three

10:54AM 24 weeks, leading up to your father's admission into Pine Lodge.

10:54AM 25 A. Okay.

10:54AM 1 Q. Based on what you saw in the three weeks leading up to  
10:54AM 2 his admission, how would you describe his mobility?

10:54AM 3 A. He was fine. He was active. He was vacuuming. He was,  
10:54AM 4 you know, socializing, loving my mom and he was just the  
10:54AM 5 same.

10:54AM 6 Q. How was his ability to walk?

10:55AM 7 A. He walked fine. There was no problems.

10:55AM 8 Q. Did he have a chair or a couch that he watched his sports  
10:55AM 9 shows in?

10:55AM 10 A. He would sit at the kitchen table and he would watch it  
10:55AM 11 because the TV was closer in the kitchen than it would be in  
10:55AM 12 the living room.

10:55AM 13 Q. And in the three weeks leading up to his admission, did  
10:55AM 14 you observe any changes in his ability to get in and out of  
10:55AM 15 that kitchen chair?

10:55AM 16 A. No.

10:55AM 17 Q. Was your father able to go to the bathroom by himself?

10:55AM 18 A. Yes.

10:55AM 19 Q. And both physically able to get in and out and up and on  
10:55AM 20 the toilet by himself?

10:55AM 21 A. Yes.

10:55AM 22 Q. And the three weeks leading up to his admission to Pine  
10:55AM 23 Lodge, did you notice any changes in his ability to dress  
10:55AM 24 himself?

10:55AM 25 A. No.

10:55AM 1 Q. And could he get all of his clothes on alone?

10:55AM 2 A. Yes. He needed help with his socks that were tight and I

10:55AM 3 would help with his socks.

10:55AM 4 Q. Other than his socks, did he need assistance?

10:55AM 5 A. He -- only if we were going out, he had trouble with his

10:56AM 6 dress shoes, but his house slippers he would put on every day

10:56AM 7 by himself.

10:56AM 8 Q. Did your dad use a walker?

10:56AM 9 A. Only if we went on vacation, or like, long periods of

10:56AM 10 time and only because it had like, a little chair on it, so

10:56AM 11 if he got tired, he could sit.

10:56AM 12 Q. Did he use a walker or a cane while he was in his home?

10:56AM 13 A. No. Never.

10:56AM 14 Q. At any point in the three weeks leading up to respite,

10:56AM 15 did he suddenly start using a walker or a cane?

10:56AM 16 A. Never. No.

10:56AM 17 Q. And his ability to carry out his daily routine, the daily

10:56AM 18 activities that you described earlier, did you notice any

10:56AM 19 changes with that in the three weeks leading up to his

10:56AM 20 admission into Pine Lodge?

10:56AM 21 A. No, I did not.

10:56AM 22 Q. Okay. We heard a little bit this morning about a back

10:56AM 23 injury your father had way back in 2007. Do you recall your

10:57AM 24 dad having an injury to his back in 2007?

10:57AM 25 A. Yes.

10:57AM 1 Q. Okay. Tell me what you remember about that.

10:57AM 2 A. I remember that he had to have like, a cement procedure  
10:57AM 3 done where they just had a little incision and they put --  
10:57AM 4 they said -- they called it cement at the time, but maybe  
10:57AM 5 that's how they were explaining it to me, but that's what --  
10:57AM 6 the procedure they did.

10:57AM 7 Q. And do you remember why he needed that?

10:57AM 8 A. Yes. He fell in the front hall.

10:57AM 9 Q. And you had already been living with mom and dad in 2007?

10:57AM 10 A. Yes.

10:57AM 11 Q. Did you live there from 2007 all the way to 2013?

10:57AM 12 A. I think I moved away for -- I can't remember, honestly.

10:57AM 13 I moved away for a little bit.

10:57AM 14 Q. And when was that?

10:57AM 15 A. I don't remember the date.

10:57AM 16 Q. And after your father's surgery in 2007, based on your  
10:58AM 17 observations of him, did he have any problems from that  
10:58AM 18 surgery by 2011, 2012?

10:58AM 19 A. No. Once he got -- he was healed from that surgery, he  
10:58AM 20 was fine, walking to Kmart and doing his --

10:58AM 21 Q. Did you say walking to Kmart?

10:58AM 22 A. Yeah. It was close. It was just around the block.

10:58AM 23 Q. So, based on your observations, once your dad recovered  
10:58AM 24 from that surgery, did you see any additional limitations  
10:58AM 25 because of it?

10:58AM 1 A. No.

10:58AM 2 THE COURT: What kind of surgery did he have?

10:58AM 3 MR. MORATH: It's a kyphoplasty. They basically put  
10:58AM 4 a little bit of cement between two vertebral bodies that have  
10:58AM 5 collapsed.

10:58AM 6 THE COURT: Two what?

10:58AM 7 MR. MORATH: Two vertebral bodies of the vertebrae of  
10:58AM 8 the spine, the bones in your spine.

10:58AM 9 THE COURT: This is spinal surgery?

10:58AM 10 MR. MORATH: Well, it's not a spinal surgery. It's  
10:58AM 11 the -- it's not the spinal cord. It's to the bones that  
10:58AM 12 surround the spinal cord. We have the vertebrae, then a disc,  
10:58AM 13 then another vertebrae. So, that's how your back is.

10:58AM 14 THE COURT: All right.

10:59AM 15 MR. MORATH: And they put some cement in between the  
10:59AM 16 two bones.

10:59AM 17 THE COURT: You don't call that spinal surgery?

10:59AM 18 MR. MORATH: Well, it's not to the spinal cord. I  
10:59AM 19 just wanted to be clear, it wasn't to the cord.

10:59AM 20 THE COURT: All right. It was some type of back  
10:59AM 21 surgery?

10:59AM 22 MR. MORATH: Correct.

10:59AM 23 THE COURT: All right. That's fine.

10:59AM 24 BY MR. MORATH:

10:59AM 25 Q. And as far as you know, did your father ever have to

10:59AM 1 return to a doctor to have anything additional done because  
10:59AM 2 of that surgery?

10:59AM 3 A. No.

10:59AM 4 Q. And we heard about another fall your father had in the  
10:59AM 5 shower in July of 2013?

10:59AM 6 A. Yes.

10:59AM 7 Q. Do you remember that?

10:59AM 8 A. Yes, I do.

10:59AM 9 Q. That was in Florida?

10:59AM 10 A. Yes.

10:59AM 11 Q. Can you tell us what you remember about that?

10:59AM 12 A. Sorry. We were on vacation, all of us. There was  
10:59AM 13 probably 15 of us on vacation and he was going to take a  
10:59AM 14 shower. And he said that he went to shut the, you know,  
11:00AM 15 shower curtain and the shower curtain fell on him and he  
11:00AM 16 slipped.

11:00AM 17 Q. And were you in the -- was it a condo?

11:00AM 18 A. It was a hotel room. So, my hotel room was different  
11:00AM 19 than his. We were all in separate ones. My parents had  
11:00AM 20 their own, my sisters.

11:00AM 21 Q. And what happened after that, you found out that he fell?

11:00AM 22 A. My mother called for me. We went down to help him. And  
11:00AM 23 I didn't want to hurt him, so we called the paramedics to  
11:00AM 24 make sure he was okay and they picked him up and he was fine.

11:00AM 25 Q. And who responded? Was it an ambulance?

11:00AM 1 A. It was paramedics.

11:00AM 2 Q. And did they come into the hotel room and check your  
11:00AM 3 father out?

11:00AM 4 A. Yes.

11:00AM 5 Q. Who was in the hotel room at that point?

11:00AM 6 A. My brother.

11:00AM 7 Q. Paul?

11:00AM 8 A. Yes.

11:00AM 9 Q. And do you remember what type of examination the  
11:00AM 10 paramedics did?

11:00AM 11 A. No, I don't remember. I wasn't there in the room.

11:00AM 12 Q. And did you -- was Paul in the room when the paramedics  
11:00AM 13 were checking him out?

11:00AM 14 A. Yes.

11:00AM 15 Q. And did your father leave with the paramedics?

11:01AM 16 A. No.

11:01AM 17 Q. What was your understanding --

11:01AM 18 THE COURT: Let's go back a second. You indicated  
11:01AM 19 that your father had two nurses that came over and took care  
11:01AM 20 of him once in a while, I guess, but then you indicated that  
11:01AM 21 he was okay. What were the nurses -- what was their purpose  
11:01AM 22 of being there?

11:01AM 23 THE WITNESS: It was a regular thing that was set up  
11:01AM 24 through the VA, they would come check on him.

11:01AM 25 THE COURT: It was a regular practice of the VA, as



11:01AM 1 you understand it, to have nurses go and visit?

11:01AM 2 THE WITNESS: And it was home care instead of us  
11:01AM 3 always going to the VA for doctors' appointments.

11:01AM 4 THE COURT: As far as you know, what was the home  
11:01AM 5 care for?

11:01AM 6 THE WITNESS: Just to check on him, make sure he was  
11:01AM 7 okay.

11:01AM 8 THE COURT: Nothing specific?

11:01AM 9 THE WITNESS: No. They would check with the -- you  
11:01AM 10 know, like his ears and if he -- all I know, it was if he  
11:01AM 11 needed some medicine, they could order it for him.

11:01AM 12 THE COURT: Why would they come to the house, rather  
11:01AM 13 than he go to the VA?

11:02AM 14 THE WITNESS: It was just something they offered.

11:02AM 15 THE COURT: All right.

11:02AM 16 BY MR. MORATH:

11:02AM 17 Q. What was your understanding of your father's condition  
11:02AM 18 after the fall in Florida?

11:02AM 19 A. That he was fine.

11:02AM 20 Q. Did he receive any further medical care related to that  
11:02AM 21 fall?

11:02AM 22 A. No, he did not.

11:02AM 23 Q. Did you notice any issues that your father was having  
11:02AM 24 with his back or any other part of his body?

11:02AM 25 A. No, I didn't notice anything.

11:02AM 1 Q. Were there any complaints of pain made to you?

11:02AM 2 A. No.

11:02AM 3 THE COURT: When was that in 2013?

11:02AM 4 MR. MORATH: July, Your Honor.

11:02AM 5 THE COURT: Is that what she said?

11:02AM 6 MR. MORATH: July of 2013.

11:02AM 7 THE COURT: That's what she said?

11:02AM 8 MR. MORATH: Yes.

11:02AM 9 THE COURT: Okay.

11:02AM 10 BY MR. MORATH:

11:02AM 11 Q. Now, Loretta, it's my understanding that your father  
11:02AM 12 slipped on the stairs at home on September 5th, so four days  
11:03AM 13 before his admission to respite?

11:03AM 14 A. Yes.

11:03AM 15 Q. Now, before we talk about that, I want to read something  
11:03AM 16 to you. This is part of Exhibit 47C and it's page 532. And  
11:03AM 17 if we -- right near the center of the page there, this is a  
11:03AM 18 record from September 9th, 2013, in evidence, as part of 47C.  
11:03AM 19 And it says --

11:03AM 20 THE COURT: This is 47C?

11:03AM 21 MR. MORATH: Yes. Page --

11:03AM 22 THE COURT: What did you say the date is?

11:03AM 23 MR. MORATH: Page 532.

11:04AM 24 THE COURT: Well, what am I looking at? I'm looking  
11:04AM 25 at 47C. I don't see the page that you're --

11:04AM 1 MR. MORATH: Yeah. The easiest way to find anything  
11:04AM 2 in the VA record, Judge, is the page number.  
11:04AM 3 THE COURT: Well, what page is that?  
11:04AM 4 MR. MORATH: 532.  
11:04AM 5 MS. FLEMING: Mr. Morath, I think we're using the  
11:04AM 6 Bates numbers down below, the 1891.  
11:04AM 7 THE COURT: What page are we talking about?  
11:04AM 8 MR. MORATH: It's page 532, Bates number 1891.  
11:04AM 9 THE COURT: Page 18 -- I'm getting the wrong page.  
11:04AM 10 What's the page?  
11:04AM 11 MR. MORATH: The page is 532, but the Bates number  
11:04AM 12 underneath is 1891.  
11:04AM 13 THE COURT: 1891?  
11:04AM 14 MR. MORATH: Correct.  
11:04AM 15 THE COURT: Wait a second. So, it's page 532. But  
11:05AM 16 what's the other number represent?  
11:05AM 17 MR. MORATH: They're Bates stamped.  
11:05AM 18 THE COURT: They're what?  
11:05AM 19 MR. MORATH: It's called a Bates stamp. They have a  
11:05AM 20 sequential Bates stamp number on the entire file, basically.  
11:05AM 21 So, it would be 1891. It's right under page 532.  
11:05AM 22 THE COURT: Does it make any difference which one we  
11:05AM 23 use? It gets kind of confusing.  
11:05AM 24 MR. MORATH: We'll go with the Bates numbers.  
11:05AM 25 Probably the safer way to use the bates numbers.

11:05AM 1 THE COURT: Go with the page number.

11:05AM 2 MR. MORATH: Sure, Your Honor, page number.

11:05AM 3 THE COURT: That's 532.

11:05AM 4 MR. MORATH: Correct.

11:05AM 5 THE COURT: All right. I'm on the right page. Let's

11:05AM 6 go from there.

11:06AM 7 MR. MORATH: Thank you, Your Honor.

11:06AM 8 BY MR. MORATH:

11:06AM 9 Q. Directing your attention to the Exhibit in front of you,

11:06AM 10 Ms. Greasley. This is something that Ms. Fleming mentioned a

11:06AM 11 number of times in her opening statement. The resident fell

11:06AM 12 down three steps yesterday.

11:06AM 13 THE COURT: Wait a minute. Where are you reading

11:06AM 14 from?

11:06AM 15 MR. MORATH: We have it blown up on the screen, Your

11:06AM 16 Honor, if you'd like.

11:06AM 17 THE COURT: No. I want to use the page.

11:06AM 18 MR. MORATH: It's the -- just past the midpoint of

11:06AM 19 the page, under patient demonstrates. And then the last

11:06AM 20 sentence in that paragraph says, resident fell.

11:06AM 21 THE COURT: All right. This is September what?

11:06AM 22 MR. MORATH: September 9, 2013.

11:06AM 23 THE COURT: I thought it says September -- I see fell

11:06AM 24 on September 5th.

11:06AM 25 MR. MORATH: Correct. The record date is

11:06AM 1 September 9th.

11:06AM 2 THE COURT: All right.

11:06AM 3 MR. MORATH: Proceed?

11:06AM 4 THE COURT: Yeah. Go ahead.

11:06AM 5 BY MR. MORATH:

11:06AM 6 Q. So, Ms. Greasley, this says that the resident fell down

11:06AM 7 three steps yesterday at home before admission; in other

11:07AM 8 words, that he fell on September 8th, is that correct?

11:07AM 9 MS. FLEMING: Okay. I'm going to object to this,

11:07AM 10 Your Honor. I'm going to object. First of all, he didn't --

11:07AM 11 Ms. Greasley was not present when this record was made.

11:07AM 12 THE COURT: Well, the exhibit is in evidence, right?

11:07AM 13 MS. FLEMING: It is in evidence.

11:07AM 14 THE COURT: She can read the exhibit, what's on the  
11:07AM 15 exhibit.

11:07AM 16 MS. FLEMING: But I don't think there's been any  
11:07AM 17 foundation laid that she has any knowledge as to any of this  
11:07AM 18 record.

11:07AM 19 THE COURT: Anybody can read what is here. Does it  
11:07AM 20 make any difference? All she's doing is reading what's in the  
11:07AM 21 record.

11:07AM 22 MS. FLEMING: Okay. That's fine, Your Honor.

11:07AM 23 THE COURT: What difference does it make? Okay. Go  
11:07AM 24 ahead.

11:07AM 25

11:07AM 1 BY MR. MORATH:

11:07AM 2 Q. Ms. Greasley, the question is pretty simple. Did your  
11:07AM 3 father fall on September 8th?

11:07AM 4 A. No, he did not.

11:07AM 5 Q. And did he fall down three steps?

11:07AM 6 A. No. He slid up it. I mean, he went to go up the first  
11:07AM 7 step, it's three carpeted stairs in the hall. It's a very  
11:08AM 8 tight little corridor. So, you know, it --

11:08AM 9 THE COURT: Just one second. Again, I don't mean to  
11:08AM 10 keep interrupting. I got to make sure I'm following this.  
11:08AM 11 The question was, did your father fall on September 8th? No,  
11:08AM 12 he did not.

11:08AM 13 THE WITNESS: No.

11:08AM 14 MR. MORATH: Your Honor, I can --

11:08AM 15 THE COURT: He fell on September 5th, right?

11:08AM 16 MR. MORATH: That's what -- Your Honor, that's what  
11:08AM 17 I'm clarifying is the position taken this morning and a number  
11:08AM 18 of records I'm going to show you state that he fell on the  
11:08AM 19 8th, the day before admission, but that's simply not true.

11:08AM 20 THE COURT: All right. It was three days before?

11:08AM 21 MR. MORATH: He fell a number of days before.

11:08AM 22 THE COURT: So, it's clear it was September 5th?

11:08AM 23 MR. MORATH: That's our position, correct.

11:08AM 24 MS. FLEMING: That's the plaintiff's position. It's  
11:08AM 25 not ours, Your Honor. There's a real question as to when he

11:08AM 1 fell.

11:08AM 2 THE COURT: All right. Okay. This is -- the record

11:08AM 3 says what it says.

11:08AM 4 MS. FLEMING: Sure.

11:08AM 5 THE COURT: Okay. Go ahead. The record says what

11:08AM 6 the record says. Okay. Go ahead.

11:08AM 7 BY MR. MORATH:

11:09AM 8 Q. How do you know that he didn't fall the day before he was

11:09AM 9 admitted?

11:09AM 10 A. Because on the 6th, they came to check. He had some

11:09AM 11 problems with the airways, so, we had an appointment set

11:09AM 12 up -- on the 6th for that to be removed and for that to be

11:09AM 13 looked at. And we told him -- we told the nurse that day

11:09AM 14 that he fell the day before.

11:09AM 15 Q. And that was on the 6th and you told them on the 6th

11:09AM 16 that --

11:09AM 17 A. On the 6th.

11:09AM 18 Q. You told the nurses that he fell the day before, being

11:09AM 19 the 5th?

11:09AM 20 A. Yes, sir.

11:09AM 21 Q. And were you there for that visit on the 6th?

11:09AM 22 A. Yes.

11:09AM 23 Q. Do you remember who came to the house?

11:09AM 24 A. I don't remember, either Kevin or Theo.

11:09AM 25 Q. And you mentioned you told them about the fall the day

11:09AM 1 before?

11:09AM 2 A. Yes.

11:09AM 3 Q. And did they do anything that you saw in response to what

11:09AM 4 you told them?

11:09AM 5 A. They checked him out and they made him touch his toes,

11:10AM 6 sit and stand and walk a little bit.

11:10AM 7 Q. Ms. Greasley, I want to show you another exhibit that's

11:10AM 8 in evidence as part of page 122, part of Exhibit 50,

11:10AM 9 page 122. I'm sorry. 121.

11:10AM 10 THE COURT: Page 50? What exhibit number are we

11:10AM 11 talking about?

11:10AM 12 MR. MORATH: Exhibit 50.

11:10AM 13 THE COURT: Hang on.

11:10AM 14 MR. MORATH: And it's page 123, Your Honor.

11:11AM 15 THE COURT: Not easy to turn these pages. Page 50?

11:11AM 16 MR. MORATH: Page 123, Exhibit 50, Your Honor. It's

11:11AM 17 a radiology report. It will say radiology report real big at

11:12AM 18 the top.

11:12AM 19 THE COURT: Okay. I have the page.

11:12AM 20 MR. MORATH: Okay to continue?

11:12AM 21 THE COURT: Yes.

11:12AM 22 MR. MORATH: Okay.

11:12AM 23 BY MR. MORATH:

11:12AM 24 Q. Now, Ms. Greasley, the exhibit in front of you, there's a

11:12AM 25 section that states clinical history. And part of that



11:12AM 1 history, nurses state that he fell at home down cellar stairs

11:12AM 2 prior to being admitted to respite. Is that accurate?

11:12AM 3 A. No, it is not.

11:12AM 4 Q. What's inaccurate about that?

11:12AM 5 A. He never fell down the cellar stairs.

11:12AM 6 Q. Did the home have cellar stairs?

11:12AM 7 A. It did.

11:12AM 8 Q. And did your father ever fall -- let me ask you this.

11:12AM 9 Tell us about the fall on September 5th.

11:12AM 10 A. He was -- I believe he was coming in from outside and it

11:12AM 11 was three carpeted stairs and he just -- I feel like he

11:12AM 12 slipped on the first one and went into a squatting position

11:12AM 13 with his back to the door. The door led outside, not the

11:12AM 14 basement. So, it was not near the cellar.

11:12AM 15 THE COURT: How did you know where he fell?

11:13AM 16 THE WITNESS: When they -- we found him like that.

11:13AM 17 THE COURT: Were you there, ma'am?

11:13AM 18 THE WITNESS: Yes.

11:13AM 19 THE COURT: You saw him fall?

11:13AM 20 THE WITNESS: No. I saw him seconds after, when he

11:13AM 21 called for help.

11:13AM 22 THE COURT: Well, who would have put in there or told

11:13AM 23 persons that he fell down the stairs?

11:13AM 24 THE WITNESS: Nobody told anybody that he fell down

11:13AM 25 the basement stairs, the cellar stairs. It's not true.

11:13AM 1 THE COURT: Well, where do you think this came from?

11:13AM 2 THE WITNESS: I don't know, but my husband was there,  
11:13AM 3 my brother was there, my mom and I and he was not in the  
11:13AM 4 cellar. He was in the hallway, a very small area. Where you  
11:13AM 5 walk in the front door, there was a little landing and three  
11:13AM 6 steps into the kitchen.

11:13AM 7 THE COURT: Okay.

11:13AM 8 BY MR. MORATH:

11:13AM 9 Q. Tell us, how did you first find out about that fall on  
11:13AM 10 the 5th?

11:13AM 11 A. My mother. My mother yelled for us to come and help.

11:13AM 12 Q. Who was home at the time?

11:13AM 13 A. My husband Mark, my brother Paul and my mom and I.

11:14AM 14 Q. And how long after your mom called you for help did you  
11:14AM 15 arrive to see your father?

11:14AM 16 A. Seconds. Within -- as soon as I could fly down the  
11:14AM 17 stairs, I was there.

11:14AM 18 Q. The final exhibit I'd like to show you, ma'am, is  
11:14AM 19 Exhibit 47A and it's page 196.

11:14AM 20 THE COURT: Hang on. All right. It's the first page  
11:15AM 21 of that exhibit?

11:15AM 22 MR. MORATH: Correct, Your Honor.

11:15AM 23 THE COURT: All right. I have it.

11:15AM 24 BY MR. MORATH:

11:15AM 25 Q. Exhibit 47A, Loretta, states, in part, that on admission,

11:15AM 1 patient's son reported that patient had a fall the other day  
11:15AM 2 and --

11:15AM 3 THE COURT: Wait. Where are you reading?

11:15AM 4 MR. MORATH: Little past halfway down.

11:15AM 5 THE COURT: All right. I see it. Go ahead.

11:15AM 6 BY MR. MORATH:

11:15AM 7 Q. -- was unable to get himself up. He, therefore, had to  
11:15AM 8 lay on the floor until he got to the resident's house to pick  
11:16AM 9 him up. Is that accurate?

11:16AM 10 A. No. That is not.

11:16AM 11 Q. What is wrong with that note?

11:16AM 12 A. We were home. And he was never on the floor like, laying  
11:16AM 13 on the floor, that's for sure. He was squatting. And -- no,  
11:16AM 14 it's not true.

11:16AM 15 Q. Did your father ever have to wait for someone to get --

11:16AM 16 A. No, we were home. No --

11:16AM 17 Q. Okay.

11:16AM 18 A. -- we were home.

11:16AM 19 Q. And how long after he fell was he tended to?

11:16AM 20 A. Within seconds.

11:16AM 21 THE COURT: What's not accurate here; that he did not  
11:16AM 22 get up -- did not have to get himself up?

11:16AM 23 MR. MORATH: No, Judge, that the -- just pointing out  
11:16AM 24 the repeated -- not only the different versions in their own  
11:16AM 25 records, but they're repeating inaccuracies that he somehow

11:16AM 1 laid on the floor until someone had to come to the house to  
11:16AM 2 pick him up. There were four people in the house that picked  
11:16AM 3 him up immediately.

11:16AM 4 THE COURT: All right.

11:16AM 5 MR. MORATH: Just yet another version in their  
11:16AM 6 records.

11:16AM 7 BY MR. MORATH:

11:16AM 8 Q. So, after you and your brother and your husband got to  
11:17AM 9 dad in the hallway, I imagine you brought him in the house.

11:17AM 10 What happened next?

11:17AM 11 A. We asked him if he was okay and if he needed any help or  
11:17AM 12 if we should call anybody, you know, to check him.

11:17AM 13 Q. And what did you decide to do?

11:17AM 14 A. We didn't call anybody. He said he was fine.

11:17AM 15 Q. Did you observe him being in any pain or discomfort?

11:17AM 16 A. No, we didn't.

11:17AM 17 Q. Did you see anything that made you think he was injured?

11:17AM 18 A. No, I did not.

11:17AM 19 Q. Did you see any physical signs of injury at all?

11:17AM 20 A. No, I didn't.

11:17AM 21 Q. Did he express any pain in any way?

11:17AM 22 A. No. He said he was okay.

11:17AM 23 Q. Did you see him holding his back?

11:17AM 24 A. No.

11:17AM 25 Q. And that day, did you notice any change in his physical

11:17AM 1 ability?

11:17AM 2 A. No, I did not.

11:17AM 3 Q. How about his ability to move around, walk around, do the

11:17AM 4 things you described?

11:17AM 5 A. No. He did everything like normal.

11:17AM 6 Q. And based upon what you saw, did you have any reason to

11:17AM 7 believe he suffered any type of serious injury?

11:18AM 8 A. No, he did not.

11:18AM 9 Q. Now, so, he was home for the next couple of days. He was

11:18AM 10 home the 5th -- I'm sorry, the 6th, the rest of the day, the

11:18AM 11 5th, the 6th, the 7th and the 8th, before he leaves for Pine

11:18AM 12 Lodge on the 9th, correct?

11:18AM 13 A. Correct.

11:18AM 14 Q. How often did you see him over those four days?

11:18AM 15 A. Every day.

11:18AM 16 Q. Did you have your normal routine interaction with your

11:18AM 17 dad over those four days?

11:18AM 18 A. Yes.

11:18AM 19 Q. And during that time, did you notice any changes in your

11:18AM 20 father's physical abilities?

11:18AM 21 A. No.

11:18AM 22 Q. Did you notice any change in his ability to walk or move

11:18AM 23 around?

11:18AM 24 A. He was walking just fine.

11:18AM 25 Q. Was he still vacuuming every day?

11:18AM 1 A. Yes.

11:18AM 2 Q. How about his ability to care for himself, did it change

11:18AM 3 at all in those four days?

11:18AM 4 A. No. He was still washing up and combing his hair,

11:18AM 5 brushing his teeth.

11:18AM 6 Q. Did he require any pain medication?

11:18AM 7 A. No.

11:18AM 8 Q. And when your father left, when is the last time you saw

11:18AM 9 your dad before he left?

11:18AM 10 A. Well, we left the same day. I left for Florida. He left

11:19AM 11 for the respite. So, it was the night before I said goodbye

11:19AM 12 to him.

11:19AM 13 Q. So, the 8th?

11:19AM 14 A. Yes.

11:19AM 15 Q. When you said good-bye to him on the 8th, did you have

11:19AM 16 any concerns about his physical ability because of that slip

11:19AM 17 down the stairs?

11:19AM 18 A. No. I would have never left if I had a concern.

11:19AM 19 THE COURT: Ma'am, you left for Florida on the 8th?

11:19AM 20 THE WITNESS: The 9th.

11:19AM 21 THE COURT: 9th. That would be September 9th?

11:19AM 22 THE WITNESS: Yes.

11:19AM 23 THE COURT: And your father was -- at that time was

11:19AM 24 okay?

11:19AM 25 THE WITNESS: Yes. He was okay. He went to respite

11:19AM 1 that day.

11:19AM 2 THE COURT: All right.

11:19AM 3 BY MR. MORATH:

11:19AM 4 Q. Let's talk a little bit about the decision to put dad in

11:19AM 5 respite. How did that all come about?

11:19AM 6 A. My brother had surgery and my mom and I were going to

11:19AM 7 take a break and go see the kids, my children in Florida, my

11:19AM 8 grandchildren. And we thought -- Kevin had told us about

11:19AM 9 respite, that it was a nice little place for a break for the

11:20AM 10 family and we went from there.

11:20AM 11 Q. And you say Kevin. Kevin Hennessy?

11:20AM 12 A. Yes.

11:20AM 13 Q. So, Paul needed a surgery of his own?

11:20AM 14 A. Yes.

11:20AM 15 Q. And you were simply going to visit the family in Florida?

11:20AM 16 A. Yes.

11:20AM 17 Q. And the decision to put your dad into respite, did it

11:20AM 18 have anything to do with a decline in his physical condition?

11:20AM 19 A. No. It was like a break, a place where we could all take

11:20AM 20 a break.

11:20AM 21 Q. Did it have anything to do with your ability to no longer

11:20AM 22 care for him?

11:20AM 23 A. No.

11:20AM 24 Q. Tell me about the process of once Kevin Hennessy tells

11:20AM 25 you about respite, what was the process that you had to go

11:20AM 1 through to get it set up, get it scheduled and get him into  
11:20AM 2 the facility.

11:20AM 3 A. There was a lot of phone calls; like, interviews with --  
11:20AM 4 my brother took care of a lot of it.

11:20AM 5 Q. You said interviews with people that come to the house?

11:20AM 6 A. On the phone.

11:20AM 7 Q. Do you recall Kevin or anybody else coming to the home in  
11:21AM 8 the days leading up to respite, to evaluate him to see if he  
11:21AM 9 was stable enough to --

11:21AM 10 A. Yes. I remember --

11:21AM 11 MS. FLEMING: Objection to the form. Leading.

11:21AM 12 THE WITNESS: -- someone coming on the 4th and on the  
11:21AM 13 6th.

11:21AM 14 THE COURT: Okay. I'm going allow it.

11:21AM 15 BY MR. MORATH:

11:21AM 16 Q. You recall them coming on the 4th?

11:21AM 17 A. Yes.

11:21AM 18 Q. What do you remember about that visit?

11:21AM 19 A. I just remember them coming and checking him and kind of  
11:21AM 20 doing like, a physical thing but --

11:21AM 21 THE COURT: Did you say coming on the 4th?

11:21AM 22 MR. MORATH: They came on the 4th as well.

11:21AM 23 THE COURT: Fourth of what?

11:21AM 24 MR. MORATH: September.

11:21AM 25 THE COURT: We're talking about September 9th, aren't



11:21AM 1 we?

11:21AM 2 MR. MORATH: He was admitted on September 9th, Your  
11:21AM 3 Honor.

11:21AM 4 THE COURT: So, what's the 4th?

11:21AM 5 MR. MORATH: What we're talking about now, Your  
11:21AM 6 honor, is the -- they were at the home a number of times in  
11:21AM 7 the days leading up to --

11:21AM 8 THE COURT: So, you're going back to the 4th?

11:21AM 9 MR. MORATH: Right. We're talking about --

11:21AM 10 THE COURT: I thought we were at the 9th. We were  
11:21AM 11 taking care to have him admitted to the hospital.

11:21AM 12 MR. MORATH: Correct. We're talking about the  
11:21AM 13 process of admitting him to respite now and that process began  
11:21AM 14 with, he was seen on the 4th, the 5th and the 6th at home.

11:21AM 15 THE COURT: Ma'am, he was doing all right from what  
11:21AM 16 you told me. He was vacuuming. He was -- this was after he  
11:22AM 17 had the fall outside. Why did you want to bring him to the  
11:22AM 18 hospital?

11:22AM 19 THE WITNESS: No. It wasn't the hospital. It was  
11:22AM 20 respite. It was like a -- he was fine. So, it was a place  
11:22AM 21 where he could go when my brother was recuperating and I took  
11:22AM 22 my mother to Florida for vacation.

11:22AM 23 THE COURT: You have to clear this up, because I'm  
11:22AM 24 not following.

11:22AM 25 MR. MORATH: Sure. The plan, Your Honor, was to put

11:22AM 1 him in a two-week respite --

11:22AM 2 MS. FLEMING: Your Honor, I'm going to object to

11:22AM 3 this. Mr. Morath is testifying.

11:22AM 4 THE COURT: I understand that. You're absolutely

11:22AM 5 right.

11:22AM 6 MS. FLEMING: He can't --

11:22AM 7 THE COURT: You can't testify. What you say is not

11:22AM 8 evidence.

11:22AM 9 MR. MORATH: I understand that.

11:22AM 10 THE COURT: What the witness says is evidence. So,  
11 somehow or other, we'll take a five-minute break and see if we  
12 could get this straightened out, because I'm confused.

11:25AM 13 THE CLERK: All rise.

11:26AM 14 (Brief recess)

11:31AM 15 THE CLERK: All rise. You may be seated.

11:31AM 16 THE COURT: All right. Mr. Morath, go ahead.

11:31AM 17 MR. MORATH: Thank you, Your Honor.

11:31AM 18 BY MR. MORATH:

11:31AM 19 Q. Ms. Greasley, let's back up just for a moment, so we can  
11:31AM 20 try to clarify a few things. When did the process and the  
11:32AM 21 discussions to put your father in respite begin?

11:32AM 22 A. Long before September 4th, because they came on the 4th  
11:32AM 23 to look at my father, to make sure he was okay.

11:32AM 24 Q. So, the decision to put him in respite was made before he  
11:32AM 25 had that fall at home?

11:32AM 1 A. Yes, long before.

11:32AM 2 Q. And why did you and your family decide to put dad in  
11:32AM 3 respite?

11:32AM 4 A. Because it was supposed to be a fun place for him to go,  
11:32AM 5 like a break for everybody, a break for him, a break for us.  
11:32AM 6 They had lots of things for him to do. It sounded like fun,  
11:32AM 7 you know? I was going to see my grandchildren, taking my  
11:32AM 8 mother away for her to catch a little break. My brother  
11:32AM 9 needed rest. So, I thought it was, you know, it was told to  
11:32AM 10 me -- it was highly recommended that it was a nice place for  
11:32AM 11 him to go, for everybody, for a family break.

11:33AM 12 Q. So, the decision to put him in respite was made well  
11:33AM 13 before the fall at home?

11:33AM 14 A. That had nothing to do with the fall. It was because we  
11:33AM 15 all needed a break.

11:33AM 16 Q. And I believe you said the -- did they start the process  
11:33AM 17 of examining your father around September 4th?

11:33AM 18 A. They did.

11:33AM 19 Q. And it was the following day, you testified, the 5th,  
11:33AM 20 that he fell?

11:33AM 21 A. Yes, sir.

11:33AM 22 Q. And then they were there again on the 6th?

11:33AM 23 A. Yes.

11:33AM 24 Q. Okay. Now, when you were -- was this the first time that  
11:33AM 25 you had scheduled the visit to respite or had you thought

11:33AM 1 about doing it before?

11:33AM 2 A. We -- it was for the same stay, amount of stay, but we

11:33AM 3 canceled it at one point because my father had never been

11:33AM 4 without us and I was concerned about him being sad or missing

11:33AM 5 us.

11:34AM 6 Q. So, then you have already told us that, following the

11:34AM 7 examinations on the 4th, 5th and the 6th, we get on the 9th,

11:34AM 8 you're headed to Florida, dad is heading to respite?

11:34AM 9 A. That's right.

11:34AM 10 Q. How did your father get to the respite facility?

11:34AM 11 A. My brother-in-law Peter, my nephew Peter and my brother

11:34AM 12 Paul. My brother-in-law drove.

11:34AM 13 Q. Did you ever go to the Pine Lodge facility yourself?

11:34AM 14 A. No. I was never there.

11:34AM 15 Q. Now, when -- did you arrive into Florida on the 9th as

11:34AM 16 well?

11:34AM 17 A. Yes.

11:34AM 18 Q. And did you speak with Paul at all on the phone while you

11:34AM 19 were down there?

11:34AM 20 A. I did.

11:34AM 21 Q. How often?

11:34AM 22 A. Daily.

11:34AM 23 Q. How did you first find out that your dad fell at Pine

11:34AM 24 Lodge?

11:34AM 25 A. My brother told me.

11:34AM 1 Q. Do you remember if it was after the first fall, if it was  
11:34AM 2 after the second fall?  
11:34AM 3 A. It was after it all happened, all of the falls.  
11:34AM 4 Q. And what do you remember finding out?  
11:34AM 5 A. That my brother told me that --  
11:35AM 6 THE COURT: Ma'am, I didn't know -- you said that it  
11:35AM 7 was after it all happened. The question was, do you remember  
11:35AM 8 whether it was the first fall or the second fall, I guess is  
11:35AM 9 what you're saying.  
11:35AM 10 THE WITNESS: Yes, after the second fall.  
11:35AM 11 THE COURT: After the second fall?  
11:35AM 12 THE WITNESS: Yes, Your Honor.  
11:35AM 13 THE COURT: So, you didn't know anything about the  
11:35AM 14 first fall?  
11:35AM 15 THE WITNESS: Not at the time, no.  
11:35AM 16 THE COURT: All right.  
11:35AM 17 BY MR. MORATH:  
11:35AM 18 Q. So, when you came back, did you come back after you  
11:35AM 19 received that phone call?  
11:35AM 20 A. Yes. When I talked to my brother, he said that we need  
11:35AM 21 to bring mom home because dad wasn't doing well. He was  
11:35AM 22 really bad.  
11:35AM 23 Q. And this was after both falls at Pine Lodge?  
11:35AM 24 A. Yes.  
11:35AM 25 Q. And did you and mom come right home from Florida?

11:35AM 1 A. Yes.

11:35AM 2 Q. And when did you get back from Buffalo -- I mean to

11:35AM 3 Buffalo?

11:35AM 4 A. The night of the 12th.

11:35AM 5 Q. September 12th?

11:35AM 6 A. Yes.

11:35AM 7 Q. So, when was the first time you saw your father?

11:36AM 8 A. The next day.

11:36AM 9 Q. So, you saw your father on September 13th?

11:36AM 10 A. Yes.

11:36AM 11 Q. And where did you see him?

11:36AM 12 A. At the VA Hospital in Buffalo.

11:36AM 13 Q. Was he in a room?

11:36AM 14 A. Yes.

11:36AM 15 Q. Can you describe what you saw when you got there?

11:36AM 16 A. I saw my father in pain, like I have never seen him

11:36AM 17 before. I've never seen anybody in pain like that. He had a

11:36AM 18 terrible big black and blue mark, like on the whole -- the

11:36AM 19 side of his -- the left side of his face. And it was at the

11:36AM 20 top of his head, like all the way down here (indicating).

11:36AM 21 Q. You are describing with your hand from the top of your

11:36AM 22 forehead down to where?

11:36AM 23 A. To around his -- the top of his hair, like that.

11:36AM 24 Q. It was described this morning as a goose bump. Was it a

11:36AM 25 goose bump?

11:36AM 1 A. No, it was the size of my hand.

11:36AM 2 Q. And did you -- was it bruised?

11:36AM 3 A. It was black.

11:37AM 4 Q. Did you see any other -- setting aside the pained

11:37AM 5 expression, which we'll talk about in a minute -- did you see

11:37AM 6 any other physical signs of injuries, bruises, scrapes, stuff

11:37AM 7 like that?

11:37AM 8 A. He couldn't move. He couldn't move his arms or his legs.

11:37AM 9 He couldn't get comfortable.

11:37AM 10 Q. And this was on the 13th?

11:37AM 11 A. Yes.

11:37AM 12 Q. And could he talk to you on the 13th?

11:37AM 13 A. Yes.

11:37AM 14 THE COURT: Just one second. Hang on one second.

11:38AM 15 All right. Go ahead.

11:38AM 16 BY MR. MORATH:

11:38AM 17 Q. So, this is September 13th. It's the first time you've

11:38AM 18 seen your father since you saw him on the 8th?

11:38AM 19 A. Yes.

11:38AM 20 Q. Based on your observations, how did you compare his

11:38AM 21 condition on the 13th to when you last saw him on the 8th?

11:38AM 22 A. There is no comparison. He was broken. He was in so

11:38AM 23 much pain and moaning. And when I walked in the room, I

11:38AM 24 said, look, we're here, Dad. Mom is here. And he said that,

11:38AM 25 they hurt me, honey. And he was just moaning and couldn't

11:38AM 1 move at all.

11:38AM 2 Q. Your dad said to you, they hurt me, honey?

11:39AM 3 A. They hurt me, honey.

11:39AM 4 Q. And we know your father passed away on the early morning

11:39AM 5 on the 17th. How many of the days between the 13th and the

11:39AM 6 17th did you go see dad at the hospital?

11:39AM 7 A. Every day.

11:39AM 8 Q. And how long were you there?

11:39AM 9 A. Hours. I took my mother every day to see my dad and we'd

11:39AM 10 spend time with him.

11:39AM 11 Q. And can you describe how his condition changed at all

11:39AM 12 during those -- it would be almost four days?

11:39AM 13 A. He just kept getting worse and we couldn't control the

11:39AM 14 pain.

11:39AM 15 Q. What do you mean he kept getting worse?

11:39AM 16 A. His moaning and just the facial expressions. His eyes

11:39AM 17 were so wide open sometimes and he would be so scared

11:39AM 18 looking. And the moaning. And he couldn't really tell me

11:40AM 19 what hurt. He was just moaning.

11:40AM 20 Q. And based on what you saw, could he tell you were there?

11:40AM 21 A. Yes.

11:40AM 22 Q. How do you know that?

11:40AM 23 A. Because he called me honey. And he told me that, you

11:40AM 24 know, they hurt me, honey. He knew who I was.

11:40AM 25 Q. Did that change at all --



11:40AM 1 A. He told me he loved me. Like, he would breathe -- like,  
11:40AM 2 he would say, I love you and where is mom? So, he knew who  
11:40AM 3 we were, sure.

11:40AM 4 Q. Did there come a point in time when that stopped, where  
11:40AM 5 he no longer seemed conscious to you?

11:40AM 6 A. No.

11:40AM 7 Q. When is the last time you saw him before he passed away?

11:40AM 8 A. That morning when he passed away.

11:40AM 9 Q. Were you there when he passed away?

11:40AM 10 A. I was down the hall. We were all in the room all  
11:40AM 11 together with him and two nurses came in and said that they  
11:40AM 12 were going to wash him and you know, do something to him.  
11:40AM 13 Not quite sure what they were going to do. Mom -- but I took  
11:40AM 14 mom out of the room while they were going to clean him and I  
11:41AM 15 went down the hall with her. My brother went outside, I  
11:41AM 16 think, to make a phone call.

11:41AM 17 Q. And now, at some point, there was a decision -- the  
11:41AM 18 family made a decision to provide end-of-life care; in other  
11:41AM 19 words, stop trying to fix or help your dad and simply make  
11:41AM 20 him comfortable. Do you remember when that decision was  
11:41AM 21 made?

11:41AM 22 A. On the 16th.

11:41AM 23 Q. And why was that decision made by the family?

11:41AM 24 A. Because they couldn't control his pain and trying to make  
11:41AM 25 him comfortable.

11:41AM 1 Q. And the last time you saw your father alive, was he still  
11:41AM 2 conscious?  
11:41AM 3 A. Yes.  
11:41AM 4 Q. And did you still observe him experiencing pain?  
11:41AM 5 A. Yes. Oh, yes.  
11:41AM 6 Q. After your father passed away, did you have any further  
11:42AM 7 interaction with anybody from Pine Lodge?  
11:42AM 8 A. No.  
11:42AM 9 Q. Did you have any further conversation about getting your  
11:42AM 10 dad's stuff back or getting his belongings or anything of  
11:42AM 11 that nature?  
11:42AM 12 A. Yes.  
11:42AM 13 Q. Was that all by phone?  
11:42AM 14 A. Yes, by phone.  
11:42AM 15 Q. And did you have any other phone calls with anybody from  
11:42AM 16 Pine Lodge?  
11:42AM 17 A. Yes? We talked -- my brother was on the phone and talked  
11:42AM 18 to them.  
11:42AM 19 Q. Who did they talk to?  
11:42AM 20 A. I'm not quite sure who it was.  
11:42AM 21 Q. You heard something this morning from Ms. Fleming about a  
11:42AM 22 recorded conversation?  
11:42AM 23 A. Yes.  
11:42AM 24 Q. Do you recall that? Can you tell us about that?  
11:42AM 25 A. Yes. My brother -- I'm not sure if they called us or we

11:42AM 1 called them, because I was not downstairs when the  
11:42AM 2 conversation started. I came downstairs and -- probably in  
11:42AM 3 the middle of the conversation, not quite sure. And one of  
11:43AM 4 the doctors was on the phone with my brother when I walked  
11:43AM 5 into the room.

11:43AM 6 Q. And who decided to record that call?

11:43AM 7 A. My brother asked me to.

11:43AM 8 Q. And do you have any understanding why?

11:43AM 9 A. Because my sister was out of town and everybody wanted  
11:43AM 10 answers. Everybody wanted to know what in the world happened  
11:43AM 11 to my father.

11:43AM 12 Q. So, you recorded it so the other family members could  
11:43AM 13 hear it?

11:43AM 14 A. Yes.

11:43AM 15 THE COURT: When was this? What is the date on this  
11:43AM 16 ma'am?

11:43AM 17 MR. MORATH: This phone conversation, Judge --

11:43AM 18 MS. FLEMING: No. Objection.

11:43AM 19 THE COURT: Ma'am, when --

11:43AM 20 THE WITNESS: It was after my father passed. I'm not  
11:43AM 21 sure of the day.

11:43AM 22 THE COURT: Okay. It was after he passed away?

11:43AM 23 THE WITNESS: Yes, sir.

11:43AM 24 THE COURT: Okay. Thank you.

11:43AM 25

11:43AM 1 BY MR. MORATH:

11:43AM 2 Q. And do you remember anybody who was on that call, besides

11:43AM 3 you and your brother?

11:43AM 4 A. There were -- I recall hearing three voices on the phone.

11:43AM 5 Q. Do you know if an individual by the name of Dr. Maller

11:43AM 6 was on the phone?

11:43AM 7 A. Yes.

11:43AM 8 Q. Who is Dr. Maller?

11:44AM 9 A. The doctor from the respite.

11:44AM 10 Q. And what do you recall about that conversation?

11:44AM 11 A. I remember him saying that he was sorry.

11:44AM 12 MS. FLEMING: Objection, Your Honor. This is

11:44AM 13 hearsay. She's talking about a doctor and an out-of-court

11:44AM 14 statement.

11:44AM 15 MR. MORATH: Your Honor, it's a --

11:44AM 16 THE COURT: She's on the telephone?

11:44AM 17 MR. MORATH: Yeah --

11:44AM 18 MS. FLEMING: She's on --

11:44AM 19 THE COURT: With the doctor?

11:44AM 20 MS. FLEMING: Well, it's unclear, but yes.

11:44AM 21 THE COURT: The doctor works for the VA --

11:44AM 22 MS. FLEMING: Correct.

11:44AM 23 THE COURT: -- or works for the -- okay.

11:44AM 24 MS. FLEMING: Correct.

11:44AM 25 THE COURT: Overruled.

11:44AM 1 BY MR. MORATH:

11:44AM 2 Q. Tell me about that conversation.

11:44AM 3 A. He was very sorry. He was apologizing to us for my

11:44AM 4 father hurting or breaking his back at the VA.

11:44AM 5 Q. Did he say to you that he believed your father broke his

11:44AM 6 back at the VA?

11:44AM 7 A. Yes, he said that.

11:44AM 8 MR. MORATH: No further questions, Your Honor.

11:45AM 9 THE COURT: Can I have the spelling of that doctor?

11:45AM 10 MR. MORATH: Sure, Your Honor. M-A-L-L-E-R.

11:45AM 11 THE COURT: M-A what?

11:45AM 12 MR. MORATH: M-A-L-L-E-R.

11:45AM 13 THE COURT: Maller?

11:45AM 14 MR. MORATH: Yes.

11:45AM 15 THE COURT: Okay.

11:45AM 16

11:45AM 17 CROSS-EXAMINATION

11:45AM 18

11:45AM 19 BY MS. FLEMING:

11:45AM 20 Q. Good morning, Ms. Greasley.

11:45AM 21 A. Good morning.

11:45AM 22 Q. Now, your father had fallen and fractured his back a few  
11:45AM 23 years ago, correct?

11:45AM 24 A. Yes.

11:45AM 25 Q. And that was -- and you were in the house when the fall

11:45AM 1 occurred, correct?

11:45AM 2 A. Yes.

11:45AM 3 Q. And your mother was present in the house at the time,

11:45AM 4 correct?

11:45AM 5 A. Yes.

11:45AM 6 THE COURT: Just one second. What do you mean by

11:45AM 7 broke his back? What does that -- I don't know what she

11:46AM 8 means.

11:46AM 9 THE WITNESS: Me?

11:46AM 10 MS. FLEMING: Yes.

11:46AM 11 THE WITNESS: I'm sorry.

11:46AM 12 THE COURT: Well, you asked the question. You used

11:46AM 13 the phrase broke his back.

11:46AM 14 MS. FLEMING: Correct.

11:46AM 15 THE COURT: Do you know what that means, ma'am?

11:46AM 16 THE WITNESS: You talking to me? Your Honor, I'm not

11:46AM 17 sure if he broke his back, but he needed a procedure to fix

11:46AM 18 what was hurt, that cement procedure I was talking about

11:46AM 19 earlier.

11:46AM 20 BY MS. FLEMING:

11:46AM 21 Q. So, the fall occurred at the home, correct?

11:46AM 22 A. Yes.

11:46AM 23 Q. You were present?

11:46AM 24 A. Yes.

11:46AM 25 Q. Did you witness the fall?

11:46AM 1 A. No.

11:46AM 2 Q. You were present for the aftermath of the fall?

11:46AM 3 A. Yes.

11:46AM 4 Q. Did your mother witness the fall?

11:46AM 5 A. I'm not sure.

11:46AM 6 THE COURT: When was this fall? When, the date on

11:46AM 7 that, ma'am?

11:46AM 8 MS. FLEMING: Do you remember?

11:46AM 9 THE COURT: Approximately.

11:46AM 10 THE WITNESS: No.

11:46AM 11 THE COURT: Would he have done it in a year?

11:46AM 12 BY MS. FLEMING:

11:46AM 13 Q. You know -- you testified previously in a deposition, do

11:46AM 14 you remember that, Ms. Greasley?

11:46AM 15 A. Yes.

11:46AM 16 Q. And you testified that your father had kyphoplasty

11:46AM 17 surgery as a result of this fall in 2007, correct?

11:47AM 18 A. Yes.

11:47AM 19 Q. Is that still your testimony today?

11:47AM 20 A. Yes.

11:47AM 21 Q. Did the fall occur then shortly before he had the

11:47AM 22 kyphoplasty surgery?

11:47AM 23 A. That happened -- he fell and then he had surgery -- the

11:47AM 24 procedure, yes.

11:47AM 25 Q. And so, the fall occurred in 2007?

11:47AM 1 A. Yes.

11:47AM 2 Q. You don't recall the exact date, however?

11:47AM 3 A. I don't.

11:47AM 4 Q. Okay. And the fall occurred in the front hall of your

11:47AM 5 home, correct?

11:47AM 6 A. Yes.

11:47AM 7 Q. But you did not witness what happened?

11:47AM 8 A. No.

11:47AM 9 Q. Did your father ever tell you what happened?

11:47AM 10 A. No.

11:47AM 11 Q. Did your mother ever tell you what happened?

11:47AM 12 A. No.

11:47AM 13 Q. Did your father complain of pain after that fall?

11:47AM 14 A. Yes.

11:47AM 15 Q. And he ended up having surgery, correct?

11:47AM 16 A. Yes. He had the procedure done.

11:47AM 17 Q. And that was on his lumbar spine, correct?

11:47AM 18 A. His lower back, yes.

11:47AM 19 Q. But do you remember if it was at L-3?

11:47AM 20 A. I don't remember.

11:47AM 21 Q. Okay. Now, your brother Paul testified at -- before he

11:48AM 22 passed -- and he was sworn to tell the truth at that time.

11:48AM 23 Your brother testified that your father also --

11:48AM 24 THE COURT: Just one second. You're going to cross-

11:48AM 25 examine her on the testimony of her brother?



11:48AM 1 MS. FLEMING: No. I'm going to ask her whether she's  
11:48AM 2 aware, Your Honor. I think it's absolutely appropriate. I'm  
11:48AM 3 not trying to impeach her, I'm just asking. Is that okay,  
11:48AM 4 Your Honor? May I proceed?

11:48AM 5 THE COURT: No.

11:48AM 6 BY MS. FLEMING:

11:48AM 7 Q. Okay. Do you recall whether or not your father ever had  
11:48AM 8 shoulder surgery prior to 2013?

11:48AM 9 A. No, I don't.

11:48AM 10 Q. Do you recall whether or not your father ever had neck  
11:48AM 11 surgery?

11:48AM 12 A. Yes, I do.

11:48AM 13 Q. Okay. And was that the result of a work injury?

11:48AM 14 A. Yes.

11:48AM 15 Q. And that was done prior to 2007, correct?

11:48AM 16 A. Many years prior.

11:48AM 17 Q. Okay. And were you -- and do you know anything about the  
11:48AM 18 circumstances of your father's neck surgery?

11:48AM 19 A. I don't know.

11:48AM 20 Q. Okay. Now, you testified that you moved back with your  
11:49AM 21 parents in 2007 today?

11:49AM 22 A. Yes.

11:49AM 23 Q. Okay. Were you -- are you correct in that year or was it  
11:49AM 24 a different timeframe? I think you -- well, I'm going to  
11:49AM 25 wait for you to answer.

11:49AM 1 A. I thought it was 2007.

11:49AM 2 Q. Now, if I told you that you were sworn at your

11:49AM 3 deposition, you indicated you moved --

11:49AM 4 THE COURT: Do me a favor.

11:49AM 5 MS. FLEMING: -- in 2012.

11:49AM 6 THE COURT: If you have a deposition that's

11:49AM 7 inconsistent with what she says here, show her the deposition

11:49AM 8 and ask her about whether or not it was accurate then or is it

11:49AM 9 accurate now.

11:49AM 10 MS. FLEMING: Okay. Lisa, will you please pull up

11:49AM 11 deposition -- Joint Exhibit 12 and page 6? Thank you. I'm

11:50AM 12 going to need page 5 as well, the bottom.

11:50AM 13 THE COURT: Any way we can make that clearer? Okay.

11:50AM 14 BY MS. FLEMING:

11:50AM 15 Q. Okay. So, do you remember being asked these questions?

11:50AM 16 A. Yes.

11:50AM 17 Q. Question. Okay. So, tell me, when you -- when did you

11:50AM 18 live at 643 Linden Avenue prior to a week ago?

11:50AM 19 About 10 years. I moved there when my sister was ill.

11:50AM 20 I stayed for about five years --

11:50AM 21 MR. MORATH: Judge, I'm just going to object because

11:50AM 22 I -- she's just reading a deposition. She's not trying to

11:50AM 23 refresh her --

11:50AM 24 THE COURT: Well, she's setting it up.

11:50AM 25 MR. MORATH: She hadn't found any inconsistency.

11:50AM 1 MS. FLEMING: Well, I'm getting there.

11:50AM 2 THE COURT: Go ahead.

11:50AM 3 BY MS. FLEMING:

11:50AM 4 Q. I stayed for about five years, moved back to Florida and  
11:51AM 5 then I moved back again to help take care of my dad and mom.

11:51AM 6 Question: And when was that?

11:51AM 7 Three years ago.

11:51AM 8 Question: So, that would have been 2013?

11:51AM 9 Answer: I think it was 2012 when I moved back.

11:51AM 10 Okay. So, when you -- does that refresh your  
11:51AM 11 recollection as to when you moved back to Linden Avenue?

11:51AM 12 A. Yes.

11:51AM 13 Q. So, it was 2012, correct?

11:51AM 14 MR. MORATH: Your Honor -- that's incorrect, Your  
11:51AM 15 Honor. Objection. She's trying to impeach the witness with  
11:51AM 16 an answer that is not inconsistent. The witness testified  
11:51AM 17 that she lived there in 2007, moved out for a time being and  
11:51AM 18 then came back.

11:51AM 19 THE WITNESS: Yes.

11:51AM 20 MR. MORATH: She came back in 2012. That's not an  
11:51AM 21 inconsistent statement.

11:51AM 22 THE COURT: Well, I'll make that decision. That's my  
11:51AM 23 prerogative.

11:51AM 24 BY MS. FLEMING:

11:51AM 25 Q. Now, Ms. Greasley, you -- where do you live currently?

11:52AM 1 A. In Buffalo.

11:52AM 2 Q. You live in Buffalo currently?

11:52AM 3 A. Mm-hmm.

11:52AM 4 Q. You had previously lived in Florida, correct?

11:52AM 5 A. Yes.

11:52AM 6 Q. And your children and grandchildren live in Florida,

11:52AM 7 correct?

11:52AM 8 A. That's right.

11:52AM 9 Q. Okay. And they still do today?

11:52AM 10 A. Yes.

11:52AM 11 Q. And do you travel back and forth between Florida and

11:52AM 12 Buffalo with some frequency?

11:52AM 13 A. Yes.

11:52AM 14 Q. And back in 2013, you were also doing that, correct?

11:52AM 15 A. I took my mother there, yes.

11:52AM 16 Q. Okay. And was that in July of 2013 when you took your

11:52AM 17 mother or were there other occasions?

11:52AM 18 A. We did take -- I took my mother quite a few times to

11:52AM 19 Florida.

11:52AM 20 Q. So, you took her quite a few times to Florida during that

11:52AM 21 year. And one of these occasions was in July 2013 or was

11:52AM 22 that the vacation?

11:52AM 23 A. That was a vacation.

11:52AM 24 Q. And that was in Florida?

11:52AM 25 A. Yes.

11:52AM 1 Q. Okay. And that was the occasion in which your father  
11:53AM 2 fell, correct?

11:53AM 3 A. Yes.

11:53AM 4 Q. Okay. And you had indicated that there were  
11:53AM 5 approximately 15 people on vacation at that time, correct?

11:53AM 6 A. Yes.

11:53AM 7 Q. And your father fell while in the shower?

11:53AM 8 A. Yes.

11:53AM 9 Q. And you were not there to witness that fall, correct?

11:53AM 10 A. My father showered by himself.

11:53AM 11 Q. And after the fall, did you come into the hotel room and  
11:53AM 12 observe your father?

11:53AM 13 A. Yes.

11:53AM 14 Q. And did he appear to be injured?

11:53AM 15 A. No.

11:53AM 16 Q. He made no complaint of pain?

11:53AM 17 A. No.

11:53AM 18 Q. Yet, you called emergency medical personnel?

11:53AM 19 A. Yes.

11:53AM 20 Q. And why is that?

11:53AM 21 A. I wanted to be sure he was okay.

11:53AM 22 Q. Okay.

11:53AM 23 A. And to help him get up. It was slippery and --

11:53AM 24 Q. So, you're -- it's your testimony that he sustained no  
11:53AM 25 injury as a result of this fall?

11:53AM 1 A. Yes.

11:53AM 2 Q. Now, your father had home-based -- VA home-based care

11:54AM 3 back in 2013, correct?

11:54AM 4 A. Yes.

11:54AM 5 Q. And that had been in place for quite some time, correct?

11:54AM 6 A. Yes.

11:54AM 7 Q. And there were a number of services that your father

11:54AM 8 received as a result of this home-based care, correct?

11:54AM 9 A. Yes.

11:54AM 10 Q. And the reason why the VA personnel came to his home was

11:54AM 11 because your father had difficulty getting outside of the

11:54AM 12 home, correct?

11:54AM 13 A. It was easier for them to come there, yes.

11:54AM 14 Q. And do you recall that he had a home health care aide

11:54AM 15 that came to the house twice a week?

11:54AM 16 A. Yes.

11:54AM 17 Q. And do you remember his or her name?

11:54AM 18 A. No, I don't.

11:54AM 19 Q. Do you remember that he had a registered nurse who came

11:54AM 20 to his home on a monthly basis?

11:54AM 21 A. From the VA?

11:54AM 22 Q. Yes.

11:54AM 23 A. Yes.

11:54AM 24 Q. And do you remember his name?

11:54AM 25 A. Kevin Hennessy.

11:54AM 1 Q. He was the registered nurse?

11:54AM 2 A. Yes.

11:54AM 3 Q. Do you remember that there was also a nurse practitioner

11:54AM 4 who came to the home at least once a year but more likely

11:55AM 5 more than once a year to render care to your father?

11:55AM 6 A. Yes.

11:55AM 7 Q. And do you remember his name or her name?

11:55AM 8 A. I'm not sure if that was Theo. I'm not sure -- no, I'm

11:55AM 9 not sure about him.

11:55AM 10 Q. And your father also had a physical therapist and an

11:55AM 11 occupational therapist, a dietician and a social worker who

11:55AM 12 would come to the home on at least an annual basis to care

11:55AM 13 for your father. Do you recall that?

11:55AM 14 A. I don't recall that.

11:55AM 15 Q. Okay. Do you recall the names of any of those care

11:55AM 16 providers?

11:55AM 17 A. No, I don't.

11:55AM 18 Q. Now, you had indicated that your father was in good

11:55AM 19 health before he was admitted to respite care. You will

11:55AM 20 agree, however, your father had dementia, correct?

11:55AM 21 A. I agree. Yes, he did.

11:55AM 22 Q. And you will agree that --

11:55AM 23 A. It was dementia.

11:55AM 24 Q. I'm sorry. I don't mean to interrupt you. And you will

11:56AM 25 agree that he had frontal temporal dementia?

11:56AM 1 A. I didn't know what it was called. I know he had slight  
11:56AM 2 dementia.  
11:56AM 3 Q. Now, you had characterized his dementia as slight  
11:56AM 4 previously?  
11:56AM 5 A. Right.  
11:56AM 6 Q. But you will agree that your father's dementia was  
11:56AM 7 worsening as time went on, correct?  
11:56AM 8 A. Yes.  
11:56AM 9 Q. Okay. And it was getting worse before he was admitted to  
11:56AM 10 respite, correct?  
11:56AM 11 A. Yes.  
11:56AM 12 Q. And you will agree that your father was, at times,  
11:56AM 13 combative, correct?  
11:56AM 14 A. Not with me.  
11:56AM 15 Q. He was with your mother?  
11:56AM 16 A. My brother.  
11:56AM 17 Q. Okay. Your brother. And then he would steal things such  
11:56AM 18 as silverware, correct?  
11:56AM 19 A. Correct.  
11:56AM 20 Q. He was verbally abusive at times?  
11:56AM 21 THE COURT: What do you mean that he would steal  
11:56AM 22 things?  
11:56AM 23 THE WITNESS: Um --  
11:56AM 24 MS. FLEMING: He would steal like -- and we'll have  
11:56AM 25 her answer.



11:56AM 1 BY MS. FLEMING:

11:56AM 2 Q. Would you describe what he would steal?

11:56AM 3 A. He would steal silverware from like, if we went to my

11:57AM 4 aunt's house for dinner or like from Denny's, we would come

11:57AM 5 home and find a spoon in his pocket and packets of sugar.

11:57AM 6 Q. So, he would steal small --

11:57AM 7 A. Very small. And little things, like anything he could

11:57AM 8 fit in his pocket that was little and shiny.

11:57AM 9 Q. And at times, your father was verbally abusive, correct?

11:57AM 10 A. No. I don't agree with that.

11:57AM 11 Q. He wasn't verbally abusive with your mother or brother?

11:57AM 12 A. To my brother.

11:57AM 13 Q. Okay. So, he was verbally abusive to your brother?

11:57AM 14 A. Yes.

11:57AM 15 Q. What about, was he ever physically abusive with either

11:57AM 16 your mother or your brother?

11:57AM 17 A. No.

11:57AM 18 Q. And he had a history of acting out towards your mother,

11:57AM 19 correct?

11:57AM 20 A. Yes.

11:57AM 21 Q. He did?

11:57AM 22 THE COURT: What do you mean by acting out?

11:57AM 23 THE WITNESS: Like, yelling at her.

11:57AM 24 THE COURT: Oh, all right.

11:57AM 25 THE WITNESS: Like, raising his voice.

11:58AM 1 BY MS. FLEMING:

11:58AM 2 Q. And you had indicted that your father was independent

11:58AM 3 with activities of daily living, correct?

11:58AM 4 A. Could you repeat that? I'm sorry.

11:58AM 5 Q. You had indicated that he was independent with activities

11:58AM 6 of daily living?

11:58AM 7 A. Yes.

11:58AM 8 Q. But your father refused to shower and needed help with

11:58AM 9 bathing, correct?

11:58AM 10 A. He needed encouragement to shower, but he washed up every

11:58AM 11 day.

11:58AM 12 Q. Now, you indicated that you took care of your father's

11:58AM 13 medications, correct?

11:58AM 14 A. That's right.

11:58AM 15 Q. And do you remember what his various diagnoses were prior

11:58AM 16 to September 2013?

11:58AM 17 A. I know that he had blood pressure issues.

11:58AM 18 Q. Anything else?

11:58AM 19 A. No. I don't remember what his diagnoses were.

11:58AM 20 Q. And if the medical record indicates he was on 11

11:58AM 21 medications at the time of his admission to Pine Lodge, would

11:59AM 22 you disagree with that?

11:59AM 23 A. That sounds high. Maybe he was on like, one in the

11:59AM 24 morning, one at night of the same medicine. So, he took

11:59AM 25 like, four in the morning and four at night.

11:59AM 1 Q. Okay. So, you're not exactly sure how many pills he was  
11:59AM 2 given each day, correct?

11:59AM 3 A. Around eight.

11:59AM 4 Q. Around eight pills each day, you think?

11:59AM 5 A. Mm-hmm.

11:59AM 6 Q. And you were responsible for that?

11:59AM 7 A. My brother and I.

11:59AM 8 Q. Now, you also testified that your father was mobile,  
11:59AM 9 correct? He could walk?

11:59AM 10 A. Yes.

11:59AM 11 Q. And what sort of distance would he walk prior to  
11:59AM 12 September 2013?

11:59AM 13 A. He could walk the whole length of the house, up and down  
11:59AM 14 the stairs. If we went out, he would come with us. So, he  
11:59AM 15 was -- yeah, he did everything normally like he always did.

12:00PM 16 Q. And when he was outside the home, did he use the walker?

12:00PM 17 A. He only used the walker on long trips or long -- if we  
12:00PM 18 were going some place that we were going to be walking far.

12:00PM 19 Q. So, if the medical records indicated that -- the VA  
12:00PM 20 medical records that your father used a walker when he was  
12:00PM 21 outside the home, that would be incorrect?

12:00PM 22 A. Well, maybe they told him to, but he wouldn't use it and  
12:00PM 23 he'd use the cane like when he went to doctors' appointments.

12:00PM 24 Q. Okay. Now, you also testified that your father fell five  
12:00PM 25 days before going to Pine Lodge, correct?

12:00PM 1 A. On the 5th.

12:00PM 2 Q. And you were not there when -- you did not witness the

12:00PM 3 fall that occurred at that time, correct?

12:00PM 4 A. I did not witness it.

12:00PM 5 Q. And at that time, you were present in the home, correct?

12:00PM 6 A. That's right.

12:00PM 7 Q. Your husband at the time, Mark, was present, correct?

12:00PM 8 A. Yes.

12:00PM 9 Q. And your brother Paul was present?

12:01PM 10 A. Yes.

12:01PM 11 Q. And your mother was present?

12:01PM 12 A. Yes.

12:01PM 13 Q. And were you on the second floor of the home where you

12:01PM 14 were living?

12:01PM 15 A. Yes.

12:01PM 16 Q. And was your husband at the time up there on the second

12:01PM 17 floor with you?

12:01PM 18 A. Yes.

12:01PM 19 Q. Do you recall where your mother was?

12:01PM 20 A. In the kitchen.

12:01PM 21 Q. Your mother was in the kitchen?

12:01PM 22 A. Mm-hmm.

12:01PM 23 Q. And where was your brother Paul?

12:01PM 24 A. In the basement, in his apartment.

12:01PM 25 Q. Okay. So, at your home on Linden Avenue in Buffalo, can

12:01PM 1 you describe the area where he fell? Is this a side door?

12:01PM 2 A. Yes. It's a side door.

12:01PM 3 Q. And when you enter the door, is there a landing?

12:01PM 4 A. Yes.

12:01PM 5 Q. And then are stairs leading directly in front of you up

12:01PM 6 to the kitchen?

12:01PM 7 A. Yes.

12:01PM 8 Q. And how many stairs are there?

12:01PM 9 A. Three.

12:01PM 10 Q. And then there's a stairway leading to the basement,

12:01PM 11 correct?

12:01PM 12 A. Yes, but there's a closed door that you have to open to

12:01PM 13 get down to the basement.

12:02PM 14 Q. And is that to the left or the right of the stairway

12:02PM 15 leading to the kitchen?

12:02PM 16 A. To the left.

12:02PM 17 Q. When you heard your mother yell, do you remember what she

12:02PM 18 yelled?

12:02PM 19 A. Just for help.

12:02PM 20 Q. Did you know what the issue was at that point in time?

12:02PM 21 A. No. I ran down the stairs and saw him.

12:02PM 22 Q. And when you saw him, describe his position.

12:02PM 23 A. He was like, squatted with almost his fanny to the floor

12:02PM 24 and his feet facing the steps in front of him.

12:02PM 25 Q. So, his feet were facing the steps in front of him?

12:02PM 1 A. It looked like he was going up the steps.

12:02PM 2 Q. Okay.

12:02PM 3 A. The three steps.

12:02PM 4 Q. And his back was --

12:02PM 5 A. He was scooted to the --

12:02PM 6 Q. -- against the door?

12:02PM 7 A. Yes.

12:02PM 8 Q. And he was squatted down almost -- or to the floor?

12:02PM 9 A. Almost. Yes.

12:02PM 10 Q. So, you -- even though you didn't witness it, you presume

12:02PM 11 that he was walking up the stairs and fell backwards?

12:02PM 12 A. That's what it looked like, yeah.

12:03PM 13 Q. And you said the stairs were carpeted, correct?

12:03PM 14 A. Mm-hmm.

12:03PM 15 Q. Was the landing carpeted?

12:03PM 16 A. Yes.

12:03PM 17 Q. Is there cement or some hard surface underneath the

12:03PM 18 flooring?

12:03PM 19 A. I'm not sure.

12:03PM 20 Q. What type of surface is the doorway? What is the door

12:03PM 21 made of?

12:03PM 22 A. Wood.

12:03PM 23 Q. Okay. Now, your father, at the time, when you -- he was

12:03PM 24 not able to get up after the fall, correct?

12:03PM 25 A. No.

12:03PM 1 Q. He needed assistance?

12:03PM 2 A. Yes.

12:03PM 3 Q. And someone helped him get up after the fall?

12:03PM 4 A. Yes.

12:03PM 5 Q. And who was that?

12:03PM 6 A. My husband, Mark.

12:03PM 7 Q. Okay. And what occurred then?

12:03PM 8 A. There was nothing for him to hold onto to get up.

12:03PM 9 There's no like, railing all the way up to the end. So, Mark

12:03PM 10 helped him get up.

12:04PM 11 Q. Helped him get up and then what happened?

12:04PM 12 A. He walked up the three steps and went and sat in the

12:04PM 13 kitchen.

12:04PM 14 Q. Okay. Now, you testified that your father was fine after

12:04PM 15 this fall?

12:04PM 16 A. Yes.

12:04PM 17 Q. That he made no complaints of pain?

12:04PM 18 A. Mm-hmm.

12:04PM 19 Q. If the medical records indicate that upon admission to

12:04PM 20 Pine Lodge he was experiencing back pain, would you disagree

12:04PM 21 with that?

12:04PM 22 A. One hundred percent.

12:04PM 23 Q. Okay.

12:04PM 24 A. He was fine. I would have never left him if he was in

12:04PM 25 pain.

12:04PM 1 Q. So, you are saying that on no occasion between the time  
12:04PM 2 that the fall occurred, which you claim occurred on  
12:04PM 3 September 5th and the time he was admitted on September 9th,  
12:04PM 4 he never made any complaints of back pain?  
12:04PM 5 A. No.  
12:04PM 6 Q. He never made any complaints of anything else?  
12:04PM 7 A. He said he was fine.  
12:04PM 8 Q. Did you make any observations of any injury to his --  
12:04PM 9 any -- note any mark on his body?  
12:04PM 10 A. I did not.  
12:04PM 11 Q. Okay. Do you know if anyone else did?  
12:04PM 12 A. My brother said he had a scrape. I'm not sure if it was  
12:05PM 13 his elbow or --  
12:05PM 14 Q. Now, you haven't been asked this. Was your father having  
12:05PM 15 trouble with incontinence prior to September 9th when he was  
12:05PM 16 admitted?  
12:05PM 17 A. He would have trouble going pee.  
12:05PM 18 Q. Yeah. So, he had some problems controlling his  
12:05PM 19 urinating?  
12:05PM 20 A. He didn't -- well, he didn't pee himself.  
12:05PM 21 Q. Okay. So, he didn't -- wasn't having difficulty with  
12:05PM 22 incontinence?  
12:05PM 23 A. He was having some like, the urgency to go.  
12:05PM 24 Q. And did -- okay. And other than that, there were no  
12:05PM 25 accidents, it's your testimony?



12:05PM 1 A. He would have like, a little bit of like, dribble when he  
12:05PM 2 would go, like couldn't get it all out.

12:05PM 3 Q. Okay. Was that condition worsening before he went to  
12:05PM 4 Pine Lodge, to your knowledge?

12:06PM 5 A. I don't remember.

12:06PM 6 Q. Now, you also indicated that your father walked and could  
12:06PM 7 walk. Did your father walk -- when he walked, did he wheeze  
12:06PM 8 ever, that you recall?

12:06PM 9 A. If he was walking far, he would.

12:06PM 10 Q. Okay. And when you say far, what do you mean by that?

12:06PM 11 A. Like, if we were going out of the house, like on a  
12:06PM 12 long -- not in the house, long periods if he was walking far.

12:06PM 13 Q. Okay. So, what do you mean by walking far, though?

12:06PM 14 A. Don't know. Maybe 100 feet, 200 feet. I'm not quite  
12:06PM 15 sure. In the house, he was okay.

12:06PM 16 Q. Okay. So, you understand that your father was prescribed  
12:06PM 17 an inhaler, an Asmanex inhaler, prior to his admission to  
12:07PM 18 Pine Lodge, correct?

12:07PM 19 A. Yes. He had a little puffer.

12:07PM 20 Q. So, did he use it on occasion?

12:07PM 21 A. He never really used it.

12:07PM 22 Q. And you said, though, that when he walked outside he  
12:07PM 23 would -- and he walked far, you described it as 100 feet, he  
12:07PM 24 would wheeze?

12:07PM 25 A. I'm not sure how hard it was for him to walk from my

12:07PM 1 house to Denny's. We were like, five houses or six houses  
12:07PM 2 from there.  
12:07PM 3 Q. Okay. And it's your testimony that he could walk there?  
12:07PM 4 A. Yeah. He walked there all the time.  
12:07PM 5 Q. He walked?  
12:07PM 6 A. To Denny's.  
12:07PM 7 Q. Five or six houses down to Denny's for breakfast?  
12:07PM 8 A. Or dinner.  
12:07PM 9 Q. And he didn't wheeze at any point?  
12:07PM 10 A. Well, he would wheeze a little bit when he did that.  
12:07PM 11 That was a far walk for him.  
12:07PM 12 Q. Yeah.  
12:07PM 13 A. Yeah.  
12:07PM 14 Q. And he -- when he walked, was his gait wide?  
12:07PM 15 A. It was normal.  
12:07PM 16 Q. It was a normal gait?  
12:07PM 17 A. Mm-hmm.  
12:08PM 18 Q. Now, you testified that you did not go to Pine Lodge when  
12:08PM 19 your father was admitted there, correct?  
12:08PM 20 A. I did not go.  
12:08PM 21 Q. You had left for Florida that day, correct?  
12:08PM 22 A. Yes.  
12:08PM 23 Q. And you said that you did not visit your father at Pine  
12:08PM 24 Lodge because you were in Florida, correct?  
12:08PM 25 A. I was in Florida.

12:08PM 1 Q. Yet, you said that you spoke to your brother Paul every  
12:08PM 2 day, correct?

12:08PM 3 A. Yes.

12:08PM 4 Q. Yet, you also testified that you didn't find out about  
12:08PM 5 any fall until after the second fall, correct?

12:08PM 6 A. Yes.

12:08PM 7 Q. Did you realize that the first fall occurred on  
12:08PM 8 September 10th? Yes or no?

12:08PM 9 A. Yes, but --

12:08PM 10 Q. And the second fall occurred on September 12th, correct?

12:09PM 11 A. I don't know. I don't remember.

12:09PM 12 Q. So, is it your testimony that your brother never told you  
12:09PM 13 about the first fall?

12:09PM 14 A. I don't think my brother knew about the first fall until  
12:09PM 15 the next day. They tried to call my brother-in-law Peter and  
12:09PM 16 they didn't call my brother.

12:09PM 17 Q. So, it's not -- it's your testimony that, even though you  
12:09PM 18 spoke to your brother each day, he never told you about the  
12:09PM 19 first fall until the second fall occurred?

12:09PM 20 A. Yes.

12:09PM 21 Q. Now, you testified that you came back from Florida to  
12:09PM 22 Buffalo on September 12th, correct?

12:09PM 23 A. Yes.

12:09PM 24 Q. And that was after your brother told you about the second  
12:10PM 25 fall, correct?

12:10PM 1 A. Yes.

12:10PM 2 Q. And you testified that you saw your father every day

12:10PM 3 while he was at the Buffalo VA Hospital, correct?

12:10PM 4 A. Yes.

12:10PM 5 Q. And is that true and accurate testimony?

12:10PM 6 A. Yes.

12:10PM 7 Q. Do you recall being deposed previously about this matter?

12:10PM 8 A. Yes.

12:10PM 9 MS. FLEMING: And I'm going to ask, Lisa, can you

12:10PM 10 bring up Joint Exhibit 11 -- Joint Exhibit 12? I'm sorry. On

12:10PM 11 page 61. Okay.

12:10PM 12 BY MS. FLEMING:

12:11PM 13 Q. At line 3 through 5: Okay. How many times did you go to

12:11PM 14 the Buffalo VA, then, if you recall?

12:11PM 15 Answer: I don't remember.

12:11PM 16 So, is it your testimony that you did go to the hospital

12:11PM 17 every day, even though, at that time, you didn't remember how

12:11PM 18 many times you went?

12:11PM 19 A. I can't imagine not going every day.

12:11PM 20 MR. MORATH: Objection, Your Honor. Again, it's not

12:11PM 21 inconsistent. The question isn't, did you go every day? It's

12:11PM 22 how many times did she go. She could have went three times in

12:11PM 23 one day or four times in one day. That's not a question that

12:11PM 24 was asked.

12:11PM 25 THE COURT: All right. No speeches. Just rephrase

12:11PM 1 your question, please.

12:11PM 2 BY MS. FLEMING:

12:11PM 3 Q. Now, you had testified that you were -- your family --

12:11PM 4 you had decided to put, on September 16, 2013, to institute

12:12PM 5 comfort care measures for your father, correct?

12:12PM 6 A. Yes.

12:12PM 7 Q. And do you recall, did you make that decision -- did you

12:12PM 8 delay in making that decision until September 16th?

12:12PM 9 A. It was September 16th. They came earlier in the day and

12:12PM 10 were telling us that they thought that we should do that.

12:12PM 11 And we put it off for a little while that day, because I was

12:12PM 12 scared that once we did that, he was not going to be able to

12:12PM 13 talk to us anymore.

12:12PM 14 Q. So, there was a delay of some hours before comfort care

12:12PM 15 measures were instituted, correct?

12:12PM 16 A. Yes.

12:12PM 17 Q. And that was because of the family decision, correct?

12:12PM 18 A. Yes.

12:12PM 19 Q. Now, you testified that your father was, you know, on

12:12PM 20 pain medication, correct, during the time he was

12:13PM 21 hospitalized?

12:13PM 22 A. At respite?

12:13PM 23 Q. At respite or -- no. I'm talking about Buffalo VA, both

12:13PM 24 facilities, but at the Buffalo VA Hospital.

12:13PM 25 A. Oh, yes.

12:13PM 1 Q. And do you remember having a conversation with VA  
12:13PM 2 providers who were recommending that your father be made more  
12:13PM 3 comfortable and be given more potent medications at that  
12:13PM 4 time? Do you remember that?  
12:13PM 5 A. Yes.  
12:13PM 6 Q. And do you remember that you -- the family decided to  
12:13PM 7 delay giving more potent medications?  
12:13PM 8 A. Yes.  
12:13PM 9 Q. And that was because why?  
12:13PM 10 A. Because I didn't want him not to communicate with us  
12:13PM 11 anymore. I just didn't want him to, you know, stop looking  
12:13PM 12 at us. I didn't want him to -- I wanted to keep him with us  
12:13PM 13 for as long as we could.  
12:14PM 14 Q. Did you understand the pain medication would have helped  
12:14PM 15 with his pain when you made that decision?  
12:14PM 16 A. No. I thought it was just going to make him sleepy.  
12:14PM 17 Q. So, you didn't understand that --  
12:14PM 18 A. I thought it was end-of-life care. I thought it was  
12:14PM 19 going to --  
12:14PM 20 Q. So, you didn't understand that the pain medications would  
12:14PM 21 have alleviated some of the pain he was in?  
12:14PM 22 A. We eventually did that day. That night, we decided to  
12:14PM 23 give it to him.  
12:14PM 24 Q. Okay. So, there was a delay from the morning to the  
12:14PM 25 evening?

12:14PM 1 A. It was probably the afternoon to the evening, late  
12:14PM 2 afternoon, I believe.

12:14PM 3 Q. Now, you testified that you had one conversation with  
12:14PM 4 your father, correct and that was when he told you that he  
12:14PM 5 was hurt, correct?

12:14PM 6 A. Yes.

12:14PM 7 Q. And you had no other conversations with your father after  
12:14PM 8 that?

12:14PM 9 A. I had a lot of conversations with him and he couldn't --  
12:14PM 10 like, I just told him that I loved him all day long and I  
12:15PM 11 don't know if you call that, you know.

12:15PM 12 Q. Did your father respond verbally?

12:15PM 13 A. He did. He would breathe I love you back and ask for my  
12:15PM 14 mom. He would lip it, do you know what I mean? You know,  
12:15PM 15 like, I love you. He couldn't really --

12:15PM 16 Q. So, he didn't verbalize it, that he --

12:15PM 17 A. He did when I first got there, but then as the time went  
12:15PM 18 on, he was still just mouthing it.

12:15PM 19 Q. Okay.

12:15PM 20 MS. FLEMING: Lisa, could you bring up Joint  
12:15PM 21 Exhibit 12, page 55? Okay.

12:15PM 22 BY MS. FLEMING:

12:15PM 23 Q. Lines 15 through 19: And why -- you didn't have any  
12:16PM 24 further conversations with him?

12:16PM 25 Answer: No.

12:16PM 1 And why was that?

12:16PM 2 He never answered me.

12:16PM 3 Do you recall that testimony?

12:16PM 4 A. Yes.

12:16PM 5 Q. Now, you were asked a few questions about a conversation

12:17PM 6 that was tape recorded after your father died, correct?

12:17PM 7 A. Yes.

12:17PM 8 Q. And that was with some VA providers, correct?

12:17PM 9 A. Yes.

12:17PM 10 Q. And you -- did you know who those VA providers were?

12:17PM 11 A. They were the doctors from the VA.

12:17PM 12 Q. But you never visited your father while he was in respite

12:17PM 13 care, correct?

12:17PM 14 A. No, I did not.

12:17PM 15 Q. You never met Dr. Maller, correct?

12:17PM 16 A. I never -- no, I never met him.

12:17PM 17 Q. And you probably never even knew who Dr. Maller was,

12:17PM 18 correct?

12:17PM 19 A. I know my brother mentioned his name.

12:17PM 20 Q. Were you aware that Dr. Maller never provided direct care

12:17PM 21 to Mr. -- your father?

12:17PM 22 A. No, I'm not.

12:17PM 23 Q. Okay. So, do you know his title or what his status was

12:17PM 24 with respect to the care and treatment of your father?

12:17PM 25 A. No, I don't.



12:17PM 1 Q. But yet, you can identify his voice on the tape  
12:17PM 2 recording?  
12:17PM 3 A. No. I know that's who my brother was talking to.  
12:17PM 4 Q. So, how did you know that?  
12:17PM 5 A. That's what he just told me, that was the doctor that was  
12:17PM 6 involved.  
12:18PM 7 Q. The doctor that was involved?  
12:18PM 8 A. Yeah. The doctor that --  
12:18PM 9 Q. And that's what your brother told you?  
12:18PM 10 A. Mm-hmm.  
12:18PM 11 Q. Okay. Now, you testified today that your brother asked  
12:18PM 12 you to do the tape recording, correct?  
12:18PM 13 A. Yes.  
12:18PM 14 Q. Now, do you recall being asked that question at your  
12:18PM 15 deposition --  
12:18PM 16 MS. FLEMING: Lisa, can you please bring up Joint  
12:18PM 17 Exhibit 12, page 66, lines 8 through 12?  
12:18PM 18 BY MS. FLEMING:  
12:18PM 19 Q. And why did you tape the whole conversation or only part  
12:18PM 20 of it?  
12:18PM 21 You'd have to ask Paul, because he did it. And I don't  
12:19PM 22 know if he did it from the beginning or he just thought about  
12:19PM 23 doing it.  
12:19PM 24 Do you remember that testimony, Ms. Greasley?  
12:19PM 25 A. Yes, because I wasn't there for the whole conversation.

12:19PM 1 MS. FLEMING: May I just ask co-counsel? Thank you,  
12:19PM 2 Ms. Greasley, I have no further questions. Thank you, Your  
12:19PM 3 Honor.

12:19PM 4 MR. MORATH: Very few, Your Honor.

12:19PM 5

12:20PM 6 REDIRECT EXAMINATION

12:20PM 7

12:20PM 8 BY MR. MORATH:

12:20PM 9 Q. Ms. Greasley, if I may? I just want to clear up a few  
12:20PM 10 things.

12:20PM 11 A. Sure.

12:20PM 12 Q. There was some questioning about when you moved home  
12:20PM 13 versus when you moved back. And I believe during my direct  
12:20PM 14 exam, you had told me that you moved home in 2007 --

12:20PM 15 A. Yes.

12:20PM 16 Q. -- is that correct?

12:20PM 17 A. Yes.

12:20PM 18 Q. And at some point, you moved out for a period of time?

12:20PM 19 A. I did.

12:20PM 20 Q. Okay. And you couldn't remember when that was?

12:20PM 21 A. No.

12:20PM 22 Q. And you were showed a portion of your transcript that  
12:20PM 23 talked about 2012 is when you moved back?

12:20PM 24 A. Okay.

12:20PM 25 Q. Is that the time -- is that when you moved back after you

12:20PM 1 moved out for that short period of time?

12:20PM 2 MS. FLEMING: Objection. Leading.

12:20PM 3 MR. MORATH: It's redirect, Judge.

12:20PM 4 THE COURT: Overruled. Go ahead.

12:20PM 5 THE WITNESS: Yes, it is.

12:20PM 6 BY MR. MORATH:

12:20PM 7 Q. So, it is true that you moved home in 2007?

12:20PM 8 A. Yes.

12:20PM 9 Q. Now, Ms. Fleming asked you about the conversations that

12:20PM 10 Paul had with you on the phone and the fact that he didn't

12:21PM 11 tell you about the first fall and told you about both falls

12:21PM 12 at once. And you made a comment that you don't believe that

12:21PM 13 Paul knew about the first fall until the following day. What

12:21PM 14 did you mean by that?

12:21PM 15 A. Because they tried to call my brother-in-law Peter and

12:21PM 16 not my brother.

12:21PM 17 Q. They called the wrong person?

12:21PM 18 A. Yes, they called the wrong person.

12:21PM 19 MS. FLEMING: Objection, Your Honor. He's leading.

12:21PM 20 THE COURT: Overruled.

12:21PM 21 BY MR. MORATH:

12:21PM 22 Q. Do you know that Dr. Maller is the Medical Director of

12:21PM 23 Pine Lodge?

12:21PM 24 A. No.

12:21PM 25 MR. MORATH: No further questions, Your Honor. Thank

12:21PM 1 you.

12:21PM 2 THE COURT: Thank you, ma'am.

12:21PM 3 THE WITNESS: You're welcome. Thank you.

12:21PM 4 (Witness excused at 12:21 p.m.)

12:21PM 5 MS. FLEMING: Nothing further, Your Honor. Thank

12:21PM 6 you.

12:21PM 7 THE COURT: We'll take a luncheon break and return at

12:21PM 8 1:30.

12:21PM 9 MS. FLEMING: 1:30, Your Honor?

12:21PM 10 THE COURT: 1:30.

12:21PM 11 MS. FLEMING: Thank you.

12:21PM 12 THE COURT: Court will be in recess.

12:21PM 13 THE CLERK: All rise.

12:21PM 14 (Luncheon recess.)

01:31PM 15 THE COURT: Okay. We're going to go from now until

01:31PM 16 about 11:15 and we'll adjourn until tomorrow at 11:15.

01:31PM 17 THE CLERK: We'll go until 3:15.

01:31PM 18 THE COURT: 3:15. What did I say, 11:15? I think

01:31PM 19 that's already passed. Thank you.

01:31PM 20 MR. MORATH: Plaintiff calls Nurse Practitioner Kevin

01:31PM 21 Hennessy.

01:31PM 22 THE CLERK: Please state your full name and spell

01:31PM 23 your last name for the record.

01:31PM 24 THE WITNESS: Sure. It's Kevin Lynch Hennessy,

01:31PM 25 H-E-N-N-E-S-S-Y.

01:32PM 1 (The witness was sworn at 1:32 p.m.)

01:32PM 2 MR. MORATH: May I begin, Your Honor?

01:32PM 3 THE COURT: Yes, please.

01:32PM 4

01:32PM 5 DIRECT EXAMINATION

01:32PM 6

01:32PM 7 BY MR. MORATH:

01:32PM 8 Q. Good afternoon, Mr. Hennessy.

01:32PM 9 A. Good afternoon.

01:32PM 10 Q. Sir, you are a registered nurse practitioner in New York

01:32PM 11 State?

01:32PM 12 A. I am.

01:32PM 13 Q. And when were you first registered?

01:32PM 14 A. In 2007.

01:32PM 15 Q. And have you been continuously registered since then?

01:32PM 16 A. Yes.

01:32PM 17 Q. Now, I understand that you worked for the Veteran's

01:32PM 18 Administration in 2013?

01:32PM 19 A. Yes.

01:32PM 20 Q. And what was your position at that time?

01:33PM 21 A. I was a nurse practitioner at that time.

01:33PM 22 Q. And how long had you been employed with the VA?

01:33PM 23 A. Since 2005.

01:33PM 24 Q. And did you work at any particular facilities within the

01:33PM 25 VA system?

01:33PM 1 A. I did. I worked at the -- in the emergency room from  
01:33PM 2 2005 to 2007. And then from, 2007 to 2009, I worked in  
01:33PM 3 regular primary care. And then I moved along. In 2009, I  
01:33PM 4 moved into the position of home-based primary care.

01:33PM 5 Q. So, the ER, was that the Buffalo VA Hospital?

01:33PM 6 A. Yes.

01:33PM 7 Q. And then the primary care, is that the two primary care  
01:33PM 8 groups; you work in one of those?

01:33PM 9 A. Yes. I worked in primary care group 2.

01:33PM 10 Q. So, from 2009 forward, you worked in the home-based care?

01:33PM 11 A. Yes.

01:33PM 12 Q. Can you tell me a little bit about what that home-based  
01:33PM 13 care is?

01:33PM 14 A. Sure. Home-based primary care is a -- we take care of  
01:33PM 15 veterans that live at home because they're too ill to get in  
01:34PM 16 for regular primary care appointments anymore. So, a lot of  
01:34PM 17 our veterans suffer from different ailments that they can't  
01:34PM 18 physically get in any longer into our regular primary care.

01:34PM 19 Q. Well, certainly there's times that it's not that they're  
01:34PM 20 too ill; they don't drive anymore or it's easier for the  
01:34PM 21 family, right?

01:34PM 22 A. It is. Like, the vast majority of our patients can't get  
01:34PM 23 up and down stairs any longer. They don't drive. Yes,  
01:34PM 24 that's correct.

01:34PM 25 Q. So, certainly, there are patients, including

01:34PM 1 Mr. Marranco, that you would visit, home care, who could  
01:34PM 2 still get up and down stairs except that they simply didn't  
01:34PM 3 drive anymore?

01:34PM 4 A. He didn't drive but -- he didn't --

01:34PM 5 THE COURT: That's a compound question. Will you  
01:34PM 6 break that down?

01:34PM 7 MR. MORATH: Sure, Judge.

01:34PM 8 THE COURT: And it's very leading.

01:34PM 9 MR. MORATH: I'm sorry?

01:35PM 10 THE COURT: Leading.

01:35PM 11 MR. MORATH: Judge, these are employees of the  
01:35PM 12 defendant. They're adverse by definition, under the rules.  
01:35PM 13 I'm trying not to lead too much, but I believe I have the  
01:35PM 14 authority, under the law, to do it if I have to.

01:35PM 15 THE COURT: I'll give you a little latitude.

01:35PM 16 MR. MORATH: Thank you, Judge.

01:35PM 17 THE COURT: But I don't want you testifying.

01:35PM 18 MR. MORATH: Very well. Thank you.

01:35PM 19 BY MR. MORATH:

01:35PM 20 Q. Let's talk about the community living center in Batavia.  
01:35PM 21 Did you ever actually work at that facility, one of the  
01:35PM 22 lodges there?

01:35PM 23 A. I have not.

01:35PM 24 Q. Are you familiar with those?

01:35PM 25 A. I am familiar with the base, but I have never even been

01:35PM 1 out to see them.

01:35PM 2 Q. Do you understand that one of the lodges there -- they

01:35PM 3 call them one of the lodges -- is Pine Lodge. It's a respite

01:35PM 4 facility?

01:35PM 5 A. I have heard of it.

01:35PM 6 Q. But you have never been out there?

01:35PM 7 A. I have never physically seen that.

01:35PM 8 Q. So, it's fair to say you couldn't -- or can you tell me

01:35PM 9 the type of care that facility provides?

01:35PM 10 A. I cannot.

01:35PM 11 Q. Now, of course, Michael Marranco was one of the veterans

01:35PM 12 that you performed these home visits for?

01:35PM 13 A. That's correct.

01:35PM 14 Q. And so you recall, did you ever see Michael Marranco

01:36PM 15 outside of his home?

01:36PM 16 A. No.

01:36PM 17 Q. So, any visit that you had would have been at his home on

01:36PM 18 Linden Avenue in Buffalo?

01:36PM 19 A. That's correct.

01:36PM 20 Q. Did you have a chance to look through any of the notes or

01:36PM 21 records from your time caring for Mr. Marranco at his home?

01:36PM 22 A. I'm sorry. Can you repeat the question?

01:36PM 23 Q. Sure. Did you look at any of your records before coming

01:36PM 24 in here today?

01:36PM 25 A. I did.



01:36PM 1 Q. And before you looked at the records to come in here  
01:36PM 2 today, when is the last time that you looked at anything that  
01:36PM 3 had anything to do with Mr. Marranco?  
01:36PM 4 A. 2013.  
01:36PM 5 Q. Do you recall, roughly, the first time you saw  
01:36PM 6 Mr. Marranco at his house?  
01:36PM 7 A. I do not.  
01:36PM 8 Q. I have -- I saw your name in some notes that don't  
01:36PM 9 necessarily concern the case but were from 2011, 2012. Does  
01:36PM 10 that sound possible, that you saw him as early as 2011?  
01:36PM 11 A. Yes.  
01:36PM 12 THE COURT: We don't deal in possibilities. You said  
01:37PM 13 possible. We're interested in facts. Anything is possible, I  
01:37PM 14 guess, in this world, but do not phrase the word possible. I  
01:37PM 15 am going to sustain the next time that's used.  
01:37PM 16 BY MR. MORATH:  
01:37PM 17 Q. Do you have any reason to dispute that you saw  
01:37PM 18 Mr. Marranco as early as 2011?  
01:37PM 19 A. No.  
01:37PM 20 Q. And do you have any idea how many times you saw him at  
01:37PM 21 his home?  
01:37PM 22 A. I have no clue. It was more than at least once a year.  
01:37PM 23 That, I can say for a fact.  
01:37PM 24 Q. One or two times a year?  
01:37PM 25 A. Minimally, yes.

01:37PM 1 Q. That would have been from 2000 -- certainly, 2012, 2013?

01:37PM 2 A. Correct.

01:37PM 3 Q. And the two times a year that you would see him, what

01:37PM 4 type of --

01:37PM 5 MR. KHALIL: Objection. He said that -- he's

01:37PM 6 mischaracterizing the testimony. It was, at minimum, one to

01:37PM 7 two times a year.

01:37PM 8 THE COURT: Rephrase your question, sir.

01:37PM 9 BY MR. MORATH:

01:38PM 10 Q. The times that you would see him, at minimum, one to two

01:38PM 11 times per year, what kind of visits would these be?

01:38PM 12 A. They would be -- one was definitely part of the annual

01:38PM 13 physical and the other one would be just follow up, to see

01:38PM 14 how the patient was doing at the time. Just, you know, it

01:38PM 15 was just -- we tried to get in to see him.

01:38PM 16 But a lot of times, we'd go to see him and we could hear

01:38PM 17 the patient in the house. We'd schedule visits, but, you

01:38PM 18 know, we'd let the family know we had a scheduled visit. And

01:38PM 19 then we'd hear the patient and his wife in the house and then

01:38PM 20 we'd ring the doorbell. Nobody would answer the door. So,

01:38PM 21 we'd have to reschedule visits after that.

01:38PM 22 Q. Now, when you say we, who is we?

01:38PM 23 A. A lot of times the nurse and I would go together in order

01:38PM 24 to kind of consolidate things because, again, it was

01:38PM 25 difficult to get in to see the patient on occasion.

01:38PM 1 Q. Who was the nurse?

01:38PM 2 A. Mr. Burzynski.

01:39PM 3 Q. And focusing just on 2012-2013 timeframe, were you and --  
01:39PM 4 is his first name Theo?

01:39PM 5 A. Thaddeus.

01:39PM 6 Q. Thaddeus. Were you and Thaddeus the only two individuals  
01:39PM 7 from home care who would visit him at his house?

01:39PM 8 A. No. There was -- we have a whole team who sees these  
01:39PM 9 cases. Again, these are very ill patients, so we have a  
01:39PM 10 whole team of patients that see them. We have a dietitian  
01:39PM 11 that sees them. We have physical therapy that sees them.  
01:39PM 12 Occupational therapy, dieticians, social workers.

01:39PM 13 Q. And how many times a year would they go see Mr. Marranco?

01:39PM 14 A. Everybody was mandated to see the patient at least once a  
01:39PM 15 year but, again, it depends on what the situation was and  
01:39PM 16 they could go out more frequently as well.

01:39PM 17 Q. Now, could the family also call you if they had a  
01:39PM 18 specific concern?

01:39PM 19 A. Absolutely and even after hours they could call. We have  
01:40PM 20 a triage phone line that we give all our patients with an 800  
01:40PM 21 number. So, even on the weekends, if there was a problem at  
01:40PM 22 home or in the evening hours, they could call the triage line  
01:40PM 23 as well.

01:40PM 24 Q. With respect to nurses, whether registered nurse, nurse  
01:40PM 25 practitioner, was it just you and Thaddeus that went and saw

01:40PM 1 Mr. Marranco?

01:40PM 2 A. Yes.

01:40PM 3 Q. Okay. So, no other nurses?

01:40PM 4 A. No, but let me just clarify that. If --

01:40PM 5 Q. Just wait for the next question.

01:40PM 6 A. Okay.

01:40PM 7 Q. Now, you mentioned that at least one of those visits per

01:40PM 8 year was an annual physical, right?

01:40PM 9 A. That's correct.

01:40PM 10 Q. Did you perform any type of assessment on Mr. Marranco

01:40PM 11 any time you were at his house?

01:40PM 12 A. Yes.

01:40PM 13 Q. Tell me what you would perform, whether it was the annual

01:40PM 14 physical or another visit, what would you certainly do on a

01:41PM 15 visit?

01:41PM 16 A. On an annual physical, they could get maybe a full head

01:41PM 17 to toe. And on a follow-up visit, it would be more of a

01:41PM 18 focused physical exam. And certainly, if there was something

01:41PM 19 more problematic going on at that time, they would get looked

01:41PM 20 over for that as well.

01:41PM 21 Q. And certainly you would always want to examine a patient

01:41PM 22 sufficient enough to see if they had any new injuries?

01:41PM 23 A. That's correct.

01:41PM 24 Q. And if you found a new injury, you would make a note of

01:41PM 25 it in your records?

01:41PM 1 A. That's correct.

01:41PM 2 Q. Now, you mentioned Mr. Marranco's family. Did you know

01:41PM 3 Paul Marranco? You remember Paul?

01:41PM 4 A. I did.

01:41PM 5 Q. What about his daughter, Loretta?

01:41PM 6 A. Yes. She lived upstairs from the patient.

01:41PM 7 Q. And when you went to see Mr. Marranco, were you and Theo

01:41PM 8 always together or was it sometimes just you -- not just with

01:41PM 9 the nurses, sometimes just you, sometimes just Theo?

01:41PM 10 A. There was an occasion when it was -- we would split up

01:41PM 11 and not go together.

01:42PM 12 Q. So it varied?

01:42PM 13 A. Yes.

01:42PM 14 Q. And on the visits that you went to see Mr. Marranco, do

01:42PM 15 you recall either Paul or Loretta being there?

01:42PM 16 A. Yes. The patient had dementia and so did the wife. So,

01:42PM 17 we would want a family member there so that we could

01:42PM 18 communicate with somebody who could give us any pertinent

01:42PM 19 information that we would need.

01:42PM 20 Q. So, you would ask the questions, how he's doing and have

01:42PM 21 you noted any changes, things of that nature to the family?

01:42PM 22 A. That's correct.

01:42PM 23 Q. Living with them, they'd be in the best position to tell

01:42PM 24 you?

01:42PM 25 A. That's correct.

01:42PM 1 Q. If the family mentioned any concerns or changes, you'd  
01:42PM 2 certainly make a note of that?

01:42PM 3 A. That's correct.

01:42PM 4 Q. And would that be your normal practice any time you were  
01:42PM 5 at the house to, you know, specifically ask Loretta or Paul  
01:42PM 6 if Michael was having any new issues?

01:42PM 7 A. It is, yes.

01:42PM 8 Q. And would that be -- if you know, would that be the other  
01:43PM 9 nurses' practice as well?

01:43PM 10 MR. KHALIL: Objection.

01:43PM 11 THE WITNESS: I can't speak for them. I don't know.

01:43PM 12 THE COURT: Overruled.

01:43PM 13 THE WITNESS: I was -- oh, go ahead. I'm sorry.

01:43PM 14 BY MR. MORATH:

01:43PM 15 Q. Would that be the practice of all the nurses at the home  
01:43PM 16 care facility?

01:43PM 17 A. I can't speak for them.

01:43PM 18 Q. You certainly would ask?

01:43PM 19 A. I certainly would.

01:43PM 20 Q. Did you have any -- as an LPN -- I'm sorry -- as a NP,  
01:43PM 21 did you have any supervisory position over just the RNs or  
01:43PM 22 anyone else who went out there?

01:43PM 23 A. I would -- we would be in the clinical lead. And then,  
01:43PM 24 you know, the nurse would follow below us and so forth, so  
01:43PM 25 on. We -- we wrote the orders, so that the staff below us

01:43PM 1 would, you know, follow through with the orders.

01:43PM 2 Q. And when you were at -- individually, you were personally  
01:43PM 3 at Mr. Marranco's house, for any reason, would you always  
01:43PM 4 test his gait?

01:43PM 5 A. He had advanced dementia, so if he allowed us to. You  
01:44PM 6 know, there were times when he would just walk away from the  
01:44PM 7 table but, you know, nothing specific. You know, we couldn't  
01:44PM 8 always do a full physical exam, but we did watch him get up  
01:44PM 9 and walk away and we would note that.

01:44PM 10 Q. So, did you always test his gait? In some fashion, you  
01:44PM 11 watched him walk every visit? Yes?

01:44PM 12 A. Yes.

01:44PM 13 Q. Did you always check his blood pressure?

01:44PM 14 A. Yes.

01:44PM 15 Q. Did you check any range of motion in his arms, legs?

01:44PM 16 A. Yes.

01:44PM 17 Q. Every visit?

01:44PM 18 A. No.

01:44PM 19 Q. And would you question the family as to any changes in  
01:44PM 20 his ability to do his activities of daily living?

01:44PM 21 A. Yes.

01:44PM 22 Q. And if there were any changes, you would make notes of  
01:45PM 23 that?

01:45PM 24 A. Yes. I know he was getting combative with the son when  
01:45PM 25 they were doing ADLs and then, he had a home health aide as

01:45PM 1 well. And he was not --

01:45PM 2 Q. Okay. I'm not -- I promise you you're going to get

01:45PM 3 questions -- this will move along sooner if you just answer

01:45PM 4 the question --

01:45PM 5 A. Sure.

01:45PM 6 Q. -- and we'll just keep going. Now, I'm sure you

01:45PM 7 understand that Mr. Marranco was admitted to Pine Lodge for

01:45PM 8 what was supposed to be a two-week respite stay on September

01:45PM 9 9th?

01:45PM 10 A. Yes.

01:45PM 11 Q. Now, I believe, according to the records, you were at his

01:45PM 12 home approximately five days before that, on September 4th?

01:45PM 13 A. No, that's incorrect.

01:46PM 14 Q. It was a long-term care admission evaluation though?

01:46PM 15 A. That's just a report given to the person that's going to

01:46PM 16 take over the care for the patient going into respite. It's

01:46PM 17 more of a what's been going on.

01:46PM 18 Q. And where did you get that information from?

01:46PM 19 A. I took it from -- if you look under vitals in that note,

01:46PM 20 it's -- 7/25 is where I last physically saw the patient

01:46PM 21 myself.

01:46PM 22 Q. Okay. So, we're going to look at the note in a second.

01:46PM 23 I just want to be clear. You were the only nurse

01:46PM 24 practitioner that would see Mr. Marranco at his home?

01:46PM 25 A. Correct.



01:46PM 1 Q. And the last time you physically saw him before his  
01:47PM 2 admission to respite care was in July?

01:47PM 3 A. July 25th, 2013.

01:47PM 4 Q. So, he was not seen -- the process of admitting him to  
01:47PM 5 respite facility, he was not seen by an NP?

01:47PM 6 A. That's correct.

01:47PM 7 Q. Okay.

01:47PM 8 MR. MORATH: If we could take a look at Exhibit --  
01:47PM 9 part of 47C. It's page -- begins at page 548. Sorry. The  
01:47PM 10 first page we're going to look at is 554 is the exact page.

01:48PM 11 THE COURT: Page 554?

01:48PM 12 MR. MORATH: Correct, Your Honor. Ready, Your Honor?  
01:49PM 13 I didn't know if you found it yet. I apologize.

01:49PM 14 BY MR. MORATH:

01:49PM 15 Q. Can you see that okay?

01:49PM 16 A. I can.

01:49PM 17 Q. Okay. What is the purpose of this note that we're  
01:49PM 18 looking at here? This one that's titled Administrative Note  
01:49PM 19 September 4th at 0939?

01:49PM 20 A. This is a 1010M. It's a schedule to let the nursing home  
01:49PM 21 in Batavia know that this patient is going to be scheduled to  
01:49PM 22 be coming out to their facility for his respite stay.

01:49PM 23 Q. And do you recall how you found out that this was  
01:49PM 24 happening?

01:50PM 25 A. Probably a social worker informed me.

01:50PM 1 Q. And it has here many diagnoses of dementia and he's  
01:50PM 2 heading off to Pine Lodge. Where it says Pine, I guess?  
01:50PM 3 A. I'm sorry. Let me just --  
01:50PM 4 Q. Right below date of admission of September 9th.  
01:50PM 5 A. Okay. Dementia. Yeah. And it says check in -- ward,  
01:50PM 6 Pine. Yes.  
01:50PM 7 Q. And then we see attending physician Maller. Who is  
01:50PM 8 Dr. Maller?  
01:50PM 9 A. Dr. Marc Maller is the head of the medical out at  
01:50PM 10 Batavia.  
01:50PM 11 Q. So, he's the head of the medical end of the Pine Lodge  
01:50PM 12 facility?  
01:50PM 13 A. Correct. Yes.  
01:50PM 14 Q. Okay.

01:50PM 15 MR. MORATH: If we can flip to the next page, 555.

01:50PM 16 BY MR. MORATH:

01:51PM 17 Q. And this is the document we were talking about a moment  
01:51PM 18 ago. It's titled long-term care Admission Evaluation Note.

01:51PM 19 THE COURT: Where are you reading?

01:51PM 20 MR. MORATH: Page 555.

01:51PM 21 THE COURT: Where?

01:51PM 22 MR. MORATH: Almost last at the top, right below the  
01:51PM 23 solid line.

01:51PM 24 THE COURT: Oh, okay.

01:51PM 25

01:51PM 1 BY MR. MORATH:

01:51PM 2 Q. And then the date of the note is September 4th, 2013 and  
01:51PM 3 it was authorized by you?

01:51PM 4 A. That's correct.

01:51PM 5 Q. And what is the purpose of this note?

01:51PM 6 A. This note is basically a report to the oncoming people to  
01:51PM 7 let them know what kind of issues have been going on with the  
01:51PM 8 patient as they're entering into somebody else's care. So,  
01:51PM 9 it's like a handoff.

01:51PM 10 Q. When you say handoff, so, this is intended to inform the  
01:51PM 11 people at Pine Lodge of that information?

01:51PM 12 A. That's correct.

01:52PM 13 Q. And it's your testimony that the information that you  
01:52PM 14 used to inform them of his conditions was back from July?

01:52PM 15 A. July 25th, 2013.

01:52PM 16 Q. So, it's not the practice of the -- your practice to go  
01:52PM 17 out and see a patient closer in time to when he's going to be  
01:52PM 18 admitted to Pine Lodge?

01:52PM 19 A. It's within 45 days. It's a reasonable amount of time  
01:52PM 20 between the time that he's -- from his annual physical to the  
01:52PM 21 time he's going. And on admission into Pine Lodge, he'd be  
01:52PM 22 seen by another provider going in.

01:52PM 23 Q. So, you're comfortable that the information you've  
01:52PM 24 provided to Pine Lodge would have been accurate and up to  
01:52PM 25 date?

01:52PM 1 A. That's correct.

01:52PM 2 Q. And do you know, is this note -- how is this note

01:52PM 3 physically or electronically transmitted to Pine Lodge?

01:52PM 4 A. It's uploaded into the patient's medical record. And

01:52PM 5 then, the person -- anybody who has access to that patient's

01:53PM 6 medical record will be able to access that note.

01:53PM 7 Q. And was the part of this purpose, this note, was it to

01:53PM 8 make any determination whether or not he was stable enough to

01:53PM 9 go to Pine Lodge?

01:53PM 10 A. Yes.

01:53PM 11 Q. And you felt that he was, based off of this information?

01:53PM 12 A. This is correct.

01:53PM 13 Q. And I think a little more than halfway down here, you

01:53PM 14 state, pretty well medically stable?

01:53PM 15 A. I do put medically stable.

01:53PM 16 Q. Okay.

01:53PM 17 A. But when I write that, it just means that the patient

01:53PM 18 hasn't had any hospitalizations or anything within the

01:53PM 19 last --

01:53PM 20 Q. Sure.

01:53PM 21 A. Okay.

01:53PM 22 Q. And do you know if you were to deem the person -- if you

01:53PM 23 were to deem Mr. Marranco to be not be medically stable, do

01:53PM 24 you know if he would have been permitted to enter respite?

01:53PM 25 A. I don't know.

01:53PM 1 Q. Do you know if respite has the ability to care for  
01:53PM 2 somebody who is not medically stable?

01:54PM 3 A. They have a full team out there, so it's, you know -- I  
01:54PM 4 can't really make that determination.

01:54PM 5 Q. Fair enough. If we look at the note, right in the middle  
01:54PM 6 there, where it says physical or mental limitations, can you  
01:54PM 7 see that right in the middle?

01:54PM 8 A. Does require --

01:54PM 9 Q. Right before the main paragraph, basically.

01:54PM 10 A. Recent acute illness. Primary diagnosis.

01:54PM 11 Q. For his age. It says chronic illness, physical or mental  
01:54PM 12 limitations.

01:54PM 13 A. Yes, I do see that.

01:54PM 14 Q. Now, there you note -- under that title, you note that he  
01:54PM 15 did not require supplemental oxygen?

01:55PM 16 A. That's correct.

01:55PM 17 Q. Do you ever remember visiting Mr. Marranco at home and  
01:55PM 18 seeing him on supplemental oxygen?

01:55PM 19 A. I do not.

01:55PM 20 Q. We flip to the next page, 556. Right at the top there,  
01:55PM 21 it says, activity restrictions and then it says, no. What  
01:55PM 22 does that mean?

01:55PM 23 A. When he got up to Batavia, there would be no activity  
01:55PM 24 restrictions for him. So, if they took him to participate in  
01:55PM 25 some type of event, you know, like if they're holding some

01:55PM 1 type of thing going on there, he wouldn't be restricted from  
01:55PM 2 going to it.

01:55PM 3 Q. Next thing we have is weight bearing, full. What does  
01:55PM 4 that mean?

01:55PM 5 A. Means that he was able to stand up on his own and bear  
01:55PM 6 his weight.

01:55PM 7 THE COURT: Mr. Morath, you're on 556?

01:55PM 8 MR. MORATH: Yes, Judge.

01:55PM 9 THE COURT: Where are you reading?

01:55PM 10 MR. MORATH: Right at the top.

01:56PM 11 THE COURT: At the top of the page?

01:56PM 12 MR. MORATH: Yes. It says activity restrictions, no.  
01:56PM 13 And under that it says, weight bearing, full.

01:56PM 14 THE COURT: Wait a second. I see where it says  
01:56PM 15 activity restrictions. It says none. All right. What else  
01:56PM 16 did you just ask?

01:56PM 17 MR. MORATH: Right underneath it, weight bearing,  
01:56PM 18 full.

01:56PM 19 THE COURT: Okay.

01:56PM 20 BY MR. MORATH:

01:56PM 21 Q. Once again, can you explain what that means?

01:56PM 22 A. Sure. It means the patient was able to stand up on his  
01:56PM 23 own weight.

01:56PM 24 Q. And that was true every time you saw Mr. Marranco?

01:56PM 25 A. It's hard for me to say. There might have been a time or

01:56PM 1 two where he didn't stand up. So, it wouldn't be fair for me  
01:56PM 2 to make that statement.

01:56PM 3 Q. And when you say he did stand up, you mean he simply  
01:56PM 4 didn't. Would you agree with me, you never asked him to  
01:56PM 5 stand and he physically couldn't?

01:56PM 6 A. It's a possibility.

01:57PM 7 Q. Next thing we have is ambulatory without assistance.

01:57PM 8 A. It means the patient was ambulating. He didn't have any  
01:57PM 9 assistance, but because of his cognitive dysfunction, even  
01:57PM 10 when we gave him stuff to use, he wouldn't use it anyway. He  
01:57PM 11 needed to be physically cued. And even if he was physically  
01:57PM 12 cued doesn't necessarily mean he always uses that as well.

01:57PM 13 Q. But he could walk, right?

01:57PM 14 A. I mean, he could walk, but does it mean he was stable,  
01:57PM 15 his gait was perfect, that would be to determine.

01:57PM 16 Q. And do you ever recall, in any of your visits, either  
01:57PM 17 through what Mr. Marranco told you or through what the family  
01:57PM 18 told you, that he couldn't walk anymore in any fashion?

01:57PM 19 A. No.

01:57PM 20 Q. And then you -- a little further down, you review -- or  
01:58PM 21 you list the medications he's taking?

01:58PM 22 A. Yes.

01:58PM 23 Q. As a nurse practitioner, can you prescribe medications?

01:58PM 24 A. I can.

01:58PM 25 Q. So, would you be able to look at that list for me and

01:58PM 1 agree with me that he was not, at this time, taking any  
01:58PM 2 narcotic pain medications?

01:58PM 3 A. I agree.

01:58PM 4 Q. He was not taking any benzodiazepine?

01:58PM 5 A. I agree.

01:58PM 6 Q. And understanding that, on the face of this note, would  
01:58PM 7 you agree with me there's no discussion at all of any  
01:58PM 8 problems with his back?

01:58PM 9 A. Based on this note?

01:58PM 10 Q. Right.

01:58PM 11 A. Yes.

01:58PM 12 Q. And there's no discussion about -- or any reference to  
01:58PM 13 any issues with his hip?

01:59PM 14 A. Well, three weeks before --

01:59PM 15 Q. I'm talking about this note.

01:59PM 16 A. Okay. There's nothing written about that.

01:59PM 17 Q. The note you transmitted to Pine Lodge said nothing about  
01:59PM 18 his back, nothing about his hip and nothing about his  
01:59PM 19 shoulder?

01:59PM 20 MR. KHALIL: Objection.

01:59PM 21 MR. MORATH: This note.

01:59PM 22 THE WITNESS: Could you just back up, just so I could  
01:59PM 23 read what I wrote in my -- in that note?

01:59PM 24 BY MR. MORATH:

01:59PM 25 Q. What section would you like to see?



01:59PM 1 A. The physical or right below on -- it was the first page.

01:59PM 2 Q. Page 555?

01:59PM 3 A. Yes.

01:59PM 4 Q. Sure.

01:59PM 5 A. Thanks.

02:00PM 6 (An off-the-record discussion was held.)

02:01PM 7 THE COURT: We'll take a five-minute recess. Take a

02:01PM 8 few minutes.

02:01PM 9 THE CLERK: All rise.

02:05PM 10 (Brief recess)

02:05PM 11 THE CLERK: All rise. You may be seated.

02:07PM 12 THE COURT: All set?

02:07PM 13 MR. MORATH: Yes, Your Honor.

02:07PM 14 THE COURT: Okay. Is that our equipment's fault or

02:07PM 15 your equipment's fault?

02:07PM 16 MR. MORATH: Our fault, Judge, I'm sure.

02:07PM 17 THE COURT: Okay. Go ahead.

02:07PM 18 MR. MORATH: May I continue, Your Honor?

02:07PM 19 THE COURT: Okay. Where are we now?

02:07PM 20 MR. MORATH: I'm going to back up to the question and

02:07PM 21 then show Mr. Hennessy the record he wanted to see to answer

02:07PM 22 that.

02:07PM 23 THE COURT: Okay.

02:07PM 24 MR. MORATH: So, we're going to be using --

02:07PM 25 THE COURT: We're on page 555?

02:07PM 1 MR. MORATH: Correct, Judge. 555.

02:07PM 2 BY MR. MORATH:

02:07PM 3 Q. Mr. Hennessy, I believe that what -- the question I had

02:07PM 4 asked you was, based on this record, whether there was

02:07PM 5 transmitted to Pine Lodge -- whether there was any indication

02:07PM 6 of any problems with his back, his hip or his shoulder. And

02:07PM 7 then, you asked to look at -- I think is that the note you

02:07PM 8 wanted to look at?

02:07PM 9 A. That's correct.

02:07PM 10 Q. And have you had a chance to look at it?

02:07PM 11 A. Yes.

02:07PM 12 Q. And would you agree with me that there's no indication of

02:07PM 13 any problems to his back, to his shoulder or his foot?

02:08PM 14 A. In this note, yes.

02:08PM 15 Q. Now, this note, at the end, indicates that it was -- it

02:08PM 16 says receipt acknowledged by Jamie Kowalski. Who is Jamie

02:08PM 17 Kowalski?

02:08PM 18 A. He's the NP that's going to take over this patient's care

02:08PM 19 when he enters into respite care.

02:08PM 20 Q. When it says receipt acknowledged, what does that mean?

02:08PM 21 Does that mean he read the note?

02:08PM 22 A. He read my note and signed off on it.

02:08PM 23 Q. And by reading it, you open it electronically, does it

02:08PM 24 automatically throw your signature on there?

02:08PM 25 A. It automatically read --

02:08PM 1 THE COURT: Where are you reading from?

02:08PM 2 MR. MORATH: We're just at the end of the note, Your

02:08PM 3 Honor, on page 557.

02:08PM 4 THE COURT: 557?

02:08PM 5 MR. MORATH: Yeah. I apologize.

02:08PM 6 THE COURT: Just a second. All right. Now, I see

02:08PM 7 where you are.

02:08PM 8 BY MR. MORATH:

02:08PM 9 Q. So, we see a date of 9/4 and a time of 1314. Does that

02:09PM 10 mean that Jamie opened the note at that date and time and

02:09PM 11 read it, or at least opened it, I should say?

02:09PM 12 A. I'm sorry. It's not on my record. I can't see it.

02:09PM 13 (An off-the-record discussion was held.)

02:10PM 14 MS. FLEMING: Lisa is going to bring it up for

02:10PM 15 Mr. Morath, Ms. Nowak.

02:10PM 16 (An off-the-record discussion was held.)

02:10PM 17 BY MR. MORATH:

02:10PM 18 Q. So, there at 557, we see that Kevin Hennessy -- I'm

02:11PM 19 sorry -- Jamie Kowalski acknowledged it on 9/4 at 1334?

02:11PM 20 A. That's correct.

02:11PM 21 Q. And that just tells us the time that he opened the note?

02:11PM 22 A. He opened it and signed it.

02:11PM 23 Q. Okay.

02:11PM 24 MR. MORATH: If we could take a look now at

02:11PM 25 Exhibit -- page 550 of Exhibit 47C.

02:11PM 1 THE COURT: 550?

02:11PM 2 MR. MORATH: Page 550. Are we ready, Your Honor?

02:12PM 3 THE COURT: Yes, I got it.

02:12PM 4 BY MR. MORATH:

02:12PM 5 Q. Mr. Hennessy, this is a document titled HBPC nursing

02:12PM 6 visit note. What does that stand for?

02:12PM 7 A. It stands for home-based primary care and it's the --

02:12PM 8 Mr. Burzynski's note. It's a nursing note.

02:12PM 9 Q. Is this a note that indicates Mr. Burzynski was

02:12PM 10 physically at Mr. Marranco's home?

02:12PM 11 A. That's correct.

02:12PM 12 Q. And this was on September 5th at 1310?

02:12PM 13 A. That's correct.

02:12PM 14 Q. And can we tell, by looking at this note, whether you

02:12PM 15 attended this visit with him or not?

02:12PM 16 A. Yes. I was not with him at that visit.

02:12PM 17 Q. What would we see to tell us that you were there?

02:13PM 18 A. I would have a separate note in there. I would have my

02:13PM 19 own personal note in there.

02:13PM 20 Q. Now, is this type of note created any time either you,

02:13PM 21 yourself or Mr. Burzynski would see Mr. Marranco at home?

02:13PM 22 A. That's correct.

02:13PM 23 Q. And can you tell, by looking at this note, whether this

02:13PM 24 was one of the prearranged scheduled visits or if it was for

02:13PM 25 something in particular?

02:13PM 1 A. This was -- no. It was just his -- so, part of our  
02:13PM 2 program, you know, the nurses see -- have a specific  
02:13PM 3 timeframe that they see patients on. So, this is was  
02:13PM 4 probably just Ted's -- and I can't speak for Ted, but I'm  
02:13PM 5 assuming this was Ted's regular visit to get it in before.

02:13PM 6 Q. Okay. And after his vital signs there, we see a pain  
02:14PM 7 score on that date of zero?

02:14PM 8 A. That's right.

02:14PM 9 Q. And it says, did the patient report any pain? Answer is  
02:14PM 10 no?

02:14PM 11 A. Yes.

02:14PM 12 Q. Now, do we know, when you make your notes, is there a way  
02:14PM 13 to tell whether it was actually Mr. Marranco who answered the  
02:14PM 14 question or whether it was the family?

02:14PM 15 A. From this note?

02:14PM 16 Q. Well, first, how would you make your note if you were --

02:14PM 17 A. We would physically ask the patient those types of  
02:14PM 18 questions.

02:14PM 19 Q. Okay. So, where it says here, did the patient report any  
02:14PM 20 pain, the answer is no, that would have come from him?

02:14PM 21 A. That's correct.

02:14PM 22 Q. And then a little further down, we see limitations and  
02:14PM 23 functional status due to pain. If yes, describe. And  
02:14PM 24 there's nothing described there.

02:14PM 25 A. When you're dealing with patients --

02:14PM 1 Q. Is there anything described there?

02:14PM 2 A. No. There's nothing there.

02:14PM 3 Q. Under respiratory, little further down, patient reports  
02:14PM 4 distress or shortness of breath. Answer is no?

02:15PM 5 A. That's correct.

02:15PM 6 Q. If we can go to the second page, at 551, we see, down  
02:15PM 7 near the bottom, it says musculoskeletal. No weakness.

02:15PM 8 Ambulatory. Able to complete ADLs with minimal assistance,  
02:15PM 9 correct?

02:15PM 10 A. That's correct.

02:15PM 11 Q. Is that based on an examination, a physical exam and  
02:15PM 12 conversation?

02:15PM 13 MR. KHALIL: Objection.

02:15PM 14 THE COURT: Sustained.

02:15PM 15 BY MR. MORATH:

02:15PM 16 Q. What is that based on?

02:15PM 17 A. I don't know. I wasn't there when he did -- but I can  
02:15PM 18 see --

02:15PM 19 MR. MORATH: I can ask it a different way.

02:15PM 20 THE WITNESS: If they could move the thing so I could  
02:15PM 21 see what part of this note -- what part -- if this was the  
02:15PM 22 exam part or the subjective part.

02:16PM 23 BY MR. MORATH:

02:16PM 24 Q. Let me ask it a better way. When you visit Mr. Marranco  
02:16PM 25 at home, do you use that same musculoskeletal examination?

02:16PM 1 A. Mine would be a version of that, maybe a more advanced  
02:16PM 2 version.

02:16PM 3 Q. What would you do to do the musculoskeletal exam?

02:16PM 4 A. Range of motion, muscle tone, stuff like that.

02:16PM 5 Q. And you would ask about the family and perhaps

02:16PM 6 Mr. Marranco himself about his activities of daily living?

02:16PM 7 A. Yes.

02:16PM 8 MR. MORATH: And then, if we can look at page 548,  
02:17PM 9 please?

02:17PM 10 BY MR. MORATH:

02:17PM 11 Q. Okay. So, this is a note --

02:17PM 12 THE COURT: Let me ask you, these progress notes, are  
02:17PM 13 these -- are they made out every day or are they made out when  
02:17PM 14 something happens?

02:17PM 15 THE WITNESS: No, sir.

02:17PM 16 THE COURT: What's the procedure?

02:17PM 17 THE WITNESS: Every time the patient is physically  
02:17PM 18 saw or if there's a telephone note with the family, if we --  
02:17PM 19 any type of contact, that's when a note is put in. Otherwise,  
02:17PM 20 if there's weeks where there's no progress notes put in, so  
02:18PM 21 there's not daily progress notes.

02:18PM 22 THE COURT: So, these all took place on the same day?

02:18PM 23 THE WITNESS: No, sir. There's one that -- one from  
02:18PM 24 the 4th. This one, he's -- or one from the 5th, I think.  
02:18PM 25 This one is from the 6th. So, they were two separate days.

02:18PM 1 THE COURT: Oh, okay. But there's no set pattern?

02:18PM 2 If there's any contact with the patient at all --

02:18PM 3 THE WITNESS: Any contact with the patient, there

02:18PM 4 would be some type --

02:18PM 5 THE COURT: Every single time you see if the person's

02:18PM 6 okay?

02:18PM 7 THE WITNESS: Yes, sir. Absolutely. We want -- we

02:18PM 8 always want to have clear documentation that some type of

02:18PM 9 contact was made with the patient, family, anybody, there's --

02:18PM 10 we put in a note.

02:18PM 11 THE COURT: You sit down and type these things out?

02:18PM 12 THE WITNESS: Yes, sir. There's templates as well.

02:18PM 13 THE COURT: Oh, okay. So, you can really have 50 of

02:18PM 14 them in a day?

02:18PM 15 THE WITNESS: There could be quite a few.

02:18PM 16 THE COURT: And there could be a lot?

02:18PM 17 THE WITNESS: Yes, sir.

02:18PM 18 THE COURT: Oh, okay. At least I have an idea now.

02:19PM 19 We're on page 548?

02:19PM 20 MR. MORATH: Correct, Judge.

02:19PM 21 THE COURT: All right. Where do we go from here?

02:19PM 22 BY MR. MORATH:

02:19PM 23 Q. So, Mr. Hennessy, this is another -- we just looked at

02:19PM 24 the home visit note from the 5th.

02:19PM 25 A. Yes.



02:19PM 1 Q. Now, it appears that Mr. Burzynski is again at  
02:19PM 2 Mr. Marranco's home on the following day, on September 6th?  
02:19PM 3 A. Yes.  
02:19PM 4 Q. And this note, you actually did acknowledge on the next  
02:19PM 5 page, 549?  
02:19PM 6 A. Yes.  
02:19PM 7 Q. So, that means you opened and read this note?  
02:19PM 8 A. I did, because I followed up on that date. The day  
02:19PM 9 before, we drew labs on the patient and his potassium was  
02:19PM 10 low. So, that was a follow-up lab draw that we needed to  
02:19PM 11 recheck his potassium. And then, I made contact with the  
02:19PM 12 daughter to let her know that the potassium was low, when  
02:19PM 13 that -- we got it back to its normal.  
02:19PM 14 Q. So, looking at page 548, for the -- Mr. Burzynski's visit  
02:19PM 15 to Mr. Marranco's home on the 6th, so this is three days  
02:19PM 16 before when he goes to respite, did you see any reference to  
02:20PM 17 any issues with Mr. Marranco's back?  
02:20PM 18 A. No.  
02:20PM 19 Q. Is there any reference with any issues with ambulation?  
02:20PM 20 A. No.  
02:20PM 21 Q. Any reference to any issues with mobility?  
02:20PM 22 A. No.  
02:20PM 23 Q. And in fact, it says that he's more alert and interactive  
02:20PM 24 this visit?  
02:20PM 25 A. That's correct.

02:20PM 1 Q. And safe to assume that you -- there's no separate notes,  
02:20PM 2 so you were not there on the 6th?

02:20PM 3 A. I was not there on the 6th.

02:20PM 4 Q. And part of the reason for this visit was to follow up on  
02:21PM 5 the ear irrigation that was performed on the 5th?

02:21PM 6 A. More importantly, it was for the potassium.

02:21PM 7 Q. But part of it was the ear wax removal that they did?

02:21PM 8 A. He did the irrigation on that day, according to his  
02:21PM 9 notes. I was not there, but according to his notes.

02:21PM 10 Q. Of course.

02:21PM 11 MR. MORATH: Okay. Your Honor, that's all I have for  
02:21PM 12 this witness right now.

02:21PM 13

02:21PM 14 CROSS-EXAMINATION

02:21PM 15

02:22PM 16 BY MR. KHALIL:

02:22PM 17 Q. Good afternoon, Mr. Hennessy.

02:22PM 18 A. Good afternoon.

02:22PM 19 Q. When did you first begin caring for Mr. Marranco?

02:22PM 20 A. 2011.

02:22PM 21 Q. And did you care for him continuously up until 2013?

02:22PM 22 A. Yes.

02:22PM 23 Q. Can you describe his general state of health in that time  
02:22PM 24 frame that you cared for him?

02:22PM 25 A. He was a frail, demented man that needed our care at his

02:22PM 1 home at this point in his life and --

02:22PM 2 Q. Why did he need the home-based care program?

02:22PM 3 A. It was difficult for the family to bring him out and

02:22PM 4 bring him in for appointments any longer. Very, you know --

02:22PM 5 these frail, dementia guys, it's difficult for these families

02:22PM 6 to get them out, get them into appointments. And then, you

02:22PM 7 know, even going up and down stairs is very difficult for

02:23PM 8 them, getting them into the car to drive them. Again, all

02:23PM 9 difficult situations for -- again, these patients that we

02:23PM 10 have in our program, they're very ill. And they need more

02:23PM 11 care in their home at this point.

02:23PM 12 Q. Other than the dementia, which you mentioned, did

02:23PM 13 Mr. Marranco have any other type of ailments or conditions

02:23PM 14 during the time frame that you treated him?

02:23PM 15 A. Yes. He had hypertension. He had BPH with incontinence.

02:23PM 16 He had COPD, as well, but those are the big ones that stick

02:23PM 17 out to me the most right now.

02:23PM 18 Q. Can you, just in laymen's terms, explain what

02:23PM 19 hypertension is?

02:23PM 20 A. Hypertension is blood pressure. As the blood pressure

02:23PM 21 goes up in your -- it puts you at high risk for stroke, heart

02:24PM 22 attacks, stuff like that.

02:24PM 23 Q. Can you explain, in laymen's terms, what COPD is?

02:24PM 24 A. It's advanced lung disease. It's when somebody -- a lot

02:24PM 25 of time smokers, previous smokers have a difficult time.

02:24PM 1 Over years, their lungs become less inflated and they require  
02:24PM 2 more oxygen to do physical activity. Sometimes, depending on  
02:24PM 3 the severity, they may need to be put on oxygen.

02:24PM 4 Q. And you mentioned BPH. Can you explain what that is?

02:24PM 5 A. Sure. It's the prostate. When it becomes enlarged, it  
02:24PM 6 presses on the urethra and you have to go several times, you  
02:24PM 7 have to urinate. It happens in males.

02:24PM 8 Q. Were you aware, during the time you treated Mr. Marranco  
02:24PM 9 of his kyphoplasty in 2007?

02:25PM 10 A. I can't recall.

02:25PM 11 Q. Do you know what that is?

02:25PM 12 A. I do.

02:25PM 13 Q. Can you educate us, in laymen's terms, what a kyphoplasty  
02:25PM 14 is?

02:25PM 15 A. Sure. It's when somebody has some type of vertebral  
02:25PM 16 fracture, something they have that's repaired, they need a  
02:25PM 17 neurosurgery, something like that, to have that done.

02:25PM 18 THE COURT: Say that again. I didn't understand what  
02:25PM 19 you said.

02:25PM 20 THE WITNESS: Somebody that has a vertebral -- some  
02:25PM 21 type of vertebral dysfunction, vertebrae and then they go in  
02:25PM 22 and have some type of repair done with the neurosurgeon.

02:25PM 23 THE COURT: Oh, okay. Were you objecting?

02:25PM 24 MR. MORATH: I was going to, Your Honor.

02:25PM 25 THE COURT: That I asked the question, you were going

02:25PM 1 to object?

02:25PM 2 MR. MORATH: No, no. I was going to object when you  
02:25PM 3 started asking the question and I certainly don't believe a  
02:25PM 4 nurse practitioner is qualified to talk about surgery. And if  
02:25PM 5 he is, he certainly didn't lay any foundation when he said  
02:25PM 6 describe a kyphoplasty.

02:25PM 7 THE COURT: You can cross-examine him on it.

02:25PM 8 BY MR. KHALIL:

02:25PM 9 Q. The home-based care program, does that have a set time  
02:26PM 10 limit or, I guess, what sets the duration for when a patient  
02:26PM 11 receives home-based care?

02:26PM 12 A. A patient could have home-based primary care for their  
02:26PM 13 whole life, based on how their functionality is. If they --  
02:26PM 14 improve and they're able to get out and the families are able  
02:26PM 15 to get them in for their appointments, we certainly want to  
02:26PM 16 keep them more active, but a lot of these patients, you know,  
02:26PM 17 by the time they get in our program, they don't -- they're  
02:26PM 18 going to need us life long because, again, it's very  
02:26PM 19 difficult for them to get in for their appointments.

02:26PM 20 Q. And speaking of functioning, you were asked about  
02:26PM 21 Mr. Marranco's mobility. Did you ever see him ambulate  
02:26PM 22 anywhere beside his own home?

02:26PM 23 A. No.

02:26PM 24 Q. Did you see him ambulate anywhere other than his own  
02:26PM 25 kitchen and maybe living room or hallway?

02:26PM 1 A. No.

02:26PM 2 Q. In terms of the dementia, what effect does that have, if  
02:27PM 3 any, on a patient's ability to report his history or  
02:27PM 4 complaints to you?

02:27PM 5 MR. MORATH: Objection. Same objection, Your Honor.  
02:27PM 6 There's been zero foundation that this witness is qualified to  
02:27PM 7 testify about dementia now.

02:27PM 8 THE COURT: If you know, sir, you can answer that  
02:27PM 9 question.

02:27PM 10 THE WITNESS: Okay. Sure. Can you just repeat? I'm  
02:27PM 11 sorry.

02:27PM 12 BY MR. KHALIL:

02:27PM 13 Q. Well, I'll step back then. You treated Mr. Marranco for  
02:27PM 14 years, correct?

02:27PM 15 A. Yes.

02:27PM 16 Q. And he was diagnosed with dementia?

02:27PM 17 A. Yes.

02:27PM 18 Q. How many dementia patients do you treat?

02:27PM 19 A. Numerous. The vast foundation of our patients, they have  
02:27PM 20 dementia, beginning stages all the way to late stage  
02:27PM 21 dementia. So, again, the reason they're in our program are  
02:27PM 22 because of these types of ailments, especially dementia and  
02:27PM 23 Alzheimer's. They're one of our highest population of  
02:28PM 24 patients in our program.

02:28PM 25 Q. With dementia patients, do you ever have difficulty

02:28PM 1 assessing their pain levels or their conditions?

02:28PM 2 A. Of course, yes.

02:28PM 3 Q. Why?

02:28PM 4 A. They don't have the cognition to, you know, have a

02:28PM 5 straight conversation with you. You could go up to them and

02:28PM 6 say, are you in any pain? Although they may be pain, they

02:28PM 7 tell you no. And other reasons, sometimes, you know, they're

02:28PM 8 fearful to tell you they're in pain because they're wary that

02:28PM 9 maybe the family will want --

02:28PM 10 MR. MORATH: Objection, Your Honor. Now he's in the  
02:28PM 11 mind of a dementia patient and what they're worried about.

02:28PM 12 THE COURT: Based on his experience.

02:28PM 13 THE WITNESS: They'll be worried some about them  
02:28PM 14 putting them in nursing homes or sending them out of the  
02:28PM 15 house.

02:28PM 16 BY MR. KHALIL:

02:28PM 17 Q. So, where would you get your information when you perform  
02:28PM 18 a home-based care visit?

02:28PM 19 A. Again, I would -- we would certainly always try to get  
02:28PM 20 relevant information from the patient, but a lot of times, we  
02:29PM 21 have to get it from their caregivers.

02:29PM 22 Q. Was this true of Mr. Marranco also in the timeframe that  
02:29PM 23 you treated him?

02:29PM 24 A. Yes.

02:29PM 25 Q. Now, you were asked about a September 4th note you made

02:29PM 1 that wasn't based on visit to Mr. Marranco --

02:29PM 2 THE COURT: What page was that one?

02:29PM 3 MR. KHALIL: I'm sorry, Your Honor. I have been  
02:29PM 4 using the Bates numbers on the documents. So, for me that's  
02:29PM 5 number 1914 of Exhibit 44. Lisa, can you --

02:29PM 6 THE COURT: 1914, that's the page number?

02:29PM 7 MR. KHALIL: It's in the very bottom of the right-  
02:29PM 8 hand --

02:29PM 9 THE COURT: The other one is just above it?

02:29PM 10 MR. KHALIL: Yeah, exactly.

02:29PM 11 THE COURT: So, it's 555?

02:29PM 12 MR. KHALIL: Yes. Some of the records, Your Honor,  
02:29PM 13 are going to have duplicative numbering.

02:29PM 14 THE COURT: All the numbers I'm looking at are all  
02:29PM 15 duplicitous numbers?

02:29PM 16 MR. KHALIL: Yes.

02:29PM 17 THE COURT: So, we're at page 555?

02:29PM 18 MR. KHALIL: Yes. Yes, Your Honor.

02:29PM 19 THE COURT: That's the one you're referring to?

02:29PM 20 MR. KHALIL: That's the one I'm referring to.

02:29PM 21 THE COURT: All right.

02:30PM 22 MR. KHALIL: Lisa, if you just could highlight from  
02:30PM 23 that one bar down to the bottom? Then, next part? Perfect.

02:30PM 24 BY MR. KHALIL:

02:30PM 25 Q. Now, this is a note you were asked about before,



02:30PM 1 Mr. Hennessy?

02:30PM 2 A. Yes.

02:30PM 3 Q. Was that based on a visit on September 4th?

02:30PM 4 A. No.

02:30PM 5 Q. And when did this visit actually take place that this  
02:30PM 6 note is referencing?

02:30PM 7 A. 7/25/2013.

02:30PM 8 MR. KHALIL: Now, Your Honor, I'm going to go to  
02:30PM 9 page 590.

02:30PM 10 THE COURT: Where do you get that on this page?  
02:30PM 11 7/25?

02:30PM 12 MR. KHALIL: Yes, Your Honor. If you look at the  
02:30PM 13 screen, we blew it up a little bit.

02:30PM 14 THE COURT: I don't want to look at the screen.

02:30PM 15 MR. KHALIL: No problem. About one inch under the  
02:30PM 16 bar is an indication about the vitals being taken.

02:30PM 17 THE COURT: About two inches.

02:30PM 18 MR. KHALIL: Okay, two inches, Your Honor. And that  
02:30PM 19 is dated 7/25/13, which shows the actual date of -- well, I'll  
02:30PM 20 let Mr. Hennessy explain that.

02:30PM 21 THE COURT: Why would you be doing a progress note on  
02:30PM 22 this date?

02:30PM 23 THE WITNESS: This is a pass down. So, if I was  
02:31PM 24 given a patient, passing down a report to another provider.  
02:31PM 25 So, the custody of this patient is going to change hands to

02:31PM 1 another provider. So, what I did is, I took from my annual  
02:31PM 2 physical on that day -- it was within 45 days -- I gave them  
02:31PM 3 just a synopsis with what was going on with the patient at  
02:31PM 4 that time from that note.

02:31PM 5 THE COURT: Oh, okay. Who were you passing it on to?  
02:31PM 6 I don't see anybody else's name on the sheet.

02:31PM 7 THE WITNESS: At the bottom, Your Honor, Mr. Kowalski  
02:31PM 8 was the -- he acknowledged it and signed off on it at the  
02:31PM 9 bottom of the page.

02:31PM 10 THE COURT: At the bottom of the page?

02:31PM 11 THE WITNESS: Oh, no, sir.

02:31PM 12 MR. KHALIL: I'll get it for you, Your Honor. One  
02:31PM 13 second.

02:31PM 14 THE COURT: Is it on the next page?

02:31PM 15 MR. KHALIL: It's on page 557, Your Honor.

02:31PM 16 THE COURT: So, it's 557. What happened to 556? Why  
02:32PM 17 is that there?

02:32PM 18 MR. KHALIL: The page -- well --

02:32PM 19 THE COURT: Is this all part of one exhibit?

02:32PM 20 MR. KHALIL: Exactly, Your Honor.

02:32PM 21 THE COURT: This was all prepared at the same time?

02:32PM 22 MR. KHALIL: Exactly, Your Honor.

02:32PM 23 THE COURT: 555, 556 and 557?

02:32PM 24 MR. KHALIL: Yes, Your Honor.

02:32PM 25 THE COURT: How would I know that from reading this?

02:32PM 1 MR. KHALIL: You'd have to ask Mr. Hennessy and he  
02:32PM 2 would have to explain it.

02:32PM 3 THE WITNESS: So, the way the progress notes go, they  
02:32PM 4 kind of get lumped in -- in our EMR at the VA, it's --

02:32PM 5 THE COURT: EM --

02:32PM 6 MR. KHALIL: It's an electronic medical record, sir.

02:32PM 7 THE COURT: How would I know what that meant?

02:32PM 8 MR. KHALIL: Yes, that's true.

02:32PM 9 THE COURT: Okay.

02:32PM 10 MR. KHALIL: So, they run together and then they --  
02:32PM 11 it's -- they're quite long notes. So, it takes a few pages in  
02:32PM 12 order to get to the bottom of that page to see the --

02:32PM 13 THE COURT: You do a lot of typing every day, don't  
02:32PM 14 you?

02:32PM 15 THE WITNESS: Oh, yes, sir.

02:32PM 16 THE COURT: Okay.

02:32PM 17 BY MR. KHALIL:

02:33PM 18 Q. What was the source of the information for your  
02:33PM 19 September 4th note?

02:33PM 20 A. The source of the information, it came from my note from  
02:33PM 21 7/25.

02:33PM 22 Q. Okay.

02:33PM 23 MR. KHALIL: And Your Honor, I'd like to take a look  
02:33PM 24 at that note. It's on page 590.

02:33PM 25 THE COURT: 590?

02:33PM 1 MR. KHALIL: Yes, Your Honor.

02:33PM 2 THE COURT: I haven't seen that one before.

02:33PM 3 MR. KHALIL: No. That's a new one. 1949.

02:33PM 4 THE COURT: How do we go to -- now, this 590, is that

02:33PM 5 on the same date?

02:33PM 6 MR. KHALIL: No, Your Honor. We're going to look at

02:33PM 7 the July 25th note that Mr. Hennessy just referenced as being

02:33PM 8 the source of the September 4th information.

02:33PM 9 THE COURT: Okay. All right. I got that, I think.

02:34PM 10 BY MR. KHALIL:

02:34PM 11 Q. Mr. Hennessy, do you see your note in front of you?

02:34PM 12 A. I do.

02:34PM 13 Q. And can you explain to us what this note is?

02:34PM 14 A. This is the annual history and physical done on

02:34PM 15 Mr. Marranco. We do -- it's mandated that we do one once a

02:34PM 16 year for his annual physical.

02:34PM 17 Q. And help us with the acronyms. What is HBPC?

02:34PM 18 A. It's the -- HBPC is the home-based primary care.

02:34PM 19 Q. And what is H plus P?

02:34PM 20 A. History and physical.

02:34PM 21 Q. So, can you describe for me the process of performing a

02:34PM 22 history and physical on Mr. Marranco as related in this note?

02:34PM 23 A. Sure. So, we schedule an appointment well in advance to

02:34PM 24 get out to see him. Then, we go into the home. We go

02:34PM 25 through different things. The reason for his admission, he

02:35PM 1 lived with dementia, no longer drives and it was very  
02:35PM 2 difficult for the family to bring him in for his medical  
02:35PM 3 appointments.

02:35PM 4           You know, he lived with his wife. They lived in the  
02:35PM 5 downstairs apartment from the daughter. He has home health  
02:35PM 6 aide services. We document how often and when. Down in the  
02:35PM 7 interval visit history which tells about what was going on  
02:35PM 8 during the past year, we talk about how he was -- he had home  
02:35PM 9 health aides three times a week.

02:35PM 10           But because he became combative and that -- they  
02:35PM 11 requested to go down to two days a week because he was not  
02:35PM 12 compliant with taking showers and doing things like that, his  
02:35PM 13 ADLs.

02:35PM 14 Q. You're referring to HHA?

02:36PM 15 A. That's correct. Home health aides, correct.

02:36PM 16 Q. Right above that, where it says barriers, can you explain  
02:36PM 17 what that means, that section?

02:36PM 18 A. Sure. These are things that -- reasons why that it's  
02:36PM 19 difficult for him to do different things, barriers. He  
02:36PM 20 couldn't prepare his own meals. He needed to have his family  
02:36PM 21 prepare their meals. He didn't drive. It -- difficult to  
02:36PM 22 get him into appointments, to even get him in the car. He  
02:36PM 23 was not able to do his own finances and his self care, which  
02:36PM 24 is related to his activities of daily living as well.

02:36PM 25 Q. Okay. And then, during the interval history, can you

02:36PM 1 just describe what that is and what that information is

02:36PM 2 relaying?

02:36PM 3 A. Sure. This is a timeframe of things that had been going

02:36PM 4 on with the patient that was relayed to us. Again, whatever

02:36PM 5 minimum information we could get from the patient and the

02:37PM 6 rest from the family.

02:37PM 7 Q. The second paragraph in your interval history, do you see

02:37PM 8 that, where it says also some reports?

02:37PM 9 A. Yes.

02:37PM 10 Q. Can you describe what information that is relaying?

02:37PM 11 A. So, apparently the patient was down in Florida with the

02:37PM 12 family and he had sustained a fall while he was there three

02:37PM 13 weeks prior to us seeing him. And he -- the son had told us

02:37PM 14 that, you know, he hit his flank area and then they called

02:37PM 15 911. He had some bruising on his flank as well. They called

02:37PM 16 911. They came up to evaluate the patient. But, again, the

02:37PM 17 patient was very resistant to different things and he refused

02:37PM 18 to go to the ER on that case as well.

02:37PM 19 Q. Is this July 25th -- is July 25th the first time you

02:38PM 20 learned of that fall in Florida?

02:38PM 21 A. That's correct.

02:38PM 22 THE COURT: Let's go to the interval history. It

02:38PM 23 says 87 years old male with PMH. What is that?

02:38PM 24 THE WITNESS: That is past medical history.

02:38PM 25 THE COURT: Okay, what's HTEN?

02:38PM 1 THE WITNESS: Hypertension.

02:38PM 2 THE COURT: All right.

02:38PM 3 MR. KHALIL: I apologize, Your Honor. I missed

02:38PM 4 those.

02:38PM 5 BY MR. KHALIL:

02:38PM 6 Q. And then the COPD we already discussed, but can you

02:38PM 7 remind us one more time?

02:38PM 8 A. Sure. It's chronic obstructive pulmonary disease.

02:38PM 9 Q. And then, it says after that, being seen for his annual

02:38PM 10 admission to HBPC. That's the home-based primary care?

02:38PM 11 A. Yes.

02:38PM 12 Q. Your note indicates that he fell three weeks prior to the

02:38PM 13 7/25 date?

02:38PM 14 A. Yes.

02:38PM 15 Q. But you were never told of it or were never told of it in

02:38PM 16 those three weeks?

02:38PM 17 A. No. We never learned of it until the date of this visit.

02:39PM 18 Q. Going to the next page --

02:39PM 19 THE COURT: 591?

02:39PM 20 MR. KHALIL: Correct, Your Honor. Yeah.

02:39PM 21 BY MR. KHALIL:

02:39PM 22 Q. That second paragraph there, it begins with CPRS problem

02:39PM 23 list. Can you tell us what CPRS means?

02:39PM 24 A. CPRS is our -- is basically the computer system that we

02:39PM 25 use. I don't know exactly what the acronym stands for. But

02:39PM 1 it's our computer system that we use to input the notes for  
02:39PM 2 the VA.

02:39PM 3 THE COURT: Where are you reading that?

02:39PM 4 MR. KHALIL: It's the first full paragraph, Your  
02:39PM 5 Honor. The fourth line or so down, CPRS problem list.

02:39PM 6 THE COURT: Page 591?

02:39PM 7 MR. KHALIL: Correct, Your Honor. Right one inch  
02:39PM 8 below the progress notes in big bold.

02:39PM 9 THE COURT: Oh. I still don't see where you are.  
02:40PM 10 Under the progress notes, it say past medical surgical  
02:40PM 11 history.

02:40PM 12 MR. KHALIL: Yes. Go down to the next paragraph.

02:40PM 13 THE COURT: All right. CPRS problem list. Is that  
02:40PM 14 what you're talking about?

02:40PM 15 MR. KHALIL: Yes, Your Honor.

02:40PM 16 THE COURT: All right.

02:40PM 17 BY MR. KHALIL:

02:40PM 18 Q. So, now we have more acronyms. HTN, I believe you said  
02:40PM 19 was hypertension?

02:40PM 20 A. Yes.

02:40PM 21 Q. And what is ICD9CM401.9?

02:40PM 22 A. They're just billing codes.

02:40PM 23 Q. Okay.

02:40PM 24 A. They're just put in. That's how they bill Medicare or  
02:40PM 25 whatever.



02:40PM 1 Q. Okay. And who is being billed?

02:40PM 2 A. I can't tell you that. Some patients are billed. Some

02:40PM 3 patients are not billed. There's a whole structure. I don't

02:40PM 4 know -- we don't personally bill, so I don't know, but those

02:40PM 5 codes are used for that purpose outside the VA system.

02:40PM 6 Q. Okay. Then this list here, what is it? What's it

02:41PM 7 representing?

02:41PM 8 A. It's just his problem list of what diagnoses that he has.

02:41PM 9 Q. Okay. So, under hypertension, what's the next one?

02:41PM 10 A. Depression.

02:41PM 11 Q. And then below that, asymmetrical neural hearing loss.

02:41PM 12 And asymmetrical, that means both sides or one side?

02:41PM 13 A. One side.

02:41PM 14 Q. Okay. Gastroenteritis. What is that?

02:41PM 15 A. Inflammation of the -- like, if somebody has --

02:41PM 16 basically, it's diarrhea; a complicated term for diarrhea.

02:41PM 17 Q. And the next one is the dementia we mentioned. It says

02:41PM 18 frontal dementia. Are there different types of dementia?

02:41PM 19 A. Yes, there are a few. There's the Alzheimer's type and

02:41PM 20 then you have a frontal dementia, which is patients that have

02:41PM 21 vascular problems and it affects different parts of your

02:41PM 22 brain. And in frontal, it's -- it affects your personality,

02:42PM 23 things like that. So, it correlates with his, you know, his

02:42PM 24 behavior issues and stuff like that.

02:42PM 25 Q. Okay. Chronic airway obstruction; is that the COPD you

02:42PM 1 talked about before?

02:42PM 2 A. Yes.

02:42PM 3 Q. What is hypokalemia?

02:42PM 4 A. It's low potassium.

02:42PM 5 Q. Okay. Based on this list, would you agree that

02:42PM 6 Mr. Marranco was physically fine during this period of July

02:42PM 7 2013?

02:42PM 8 A. I would say that he was not physically fine. He was a

02:42PM 9 frail guy with dementia. Again, these guys wouldn't be in

02:42PM 10 our program if they were in perfectly good health. Their

02:42PM 11 families would still be able to get them in, get them to

02:42PM 12 their appointments, things like that.

02:43PM 13 Q. I'm going to go to page 595. Do you have that in front

02:43PM 14 of you, Mr. Hennessy?

02:43PM 15 A. I do.

02:43PM 16 Q. Can you describe what's on the screen before you,

02:43PM 17 Mr. Hennessy?

02:43PM 18 A. This is a physical examination. So, this has got the

02:43PM 19 vital signs and you know, different parts of the physical

02:43PM 20 exam that we did on the patient.

02:43PM 21 Q. And this is all still on the July 25th visit, correct?

02:43PM 22 THE COURT: July 25th?

02:43PM 23 THE WITNESS: Yes, it is. It's -- I believe it's

02:43PM 24 still the -- the date of the vitals signs say that -- there's

02:44PM 25 no date exactly on the chart, but I'm assuming this is from

02:44PM 1 the --

02:44PM 2 BY MR. KHALIL:

02:44PM 3 Q. And this is the examination that your later September 4

02:44PM 4 note is based on, correct?

02:44PM 5 A. That's correct.

02:44PM 6 Q. Okay. And did you perform this examination yourself?

02:44PM 7 A. I did.

02:44PM 8 Q. Okay. Under constitutional, that second paragraph there,

02:44PM 9 the last line says, oriented one. What does that mean?

02:44PM 10 A. It means the patient is oriented to self. He's no longer

02:44PM 11 to place and time.

02:44PM 12 Q. And what does that indicate to you?

02:44PM 13 A. That he suffers from an advanced dementia, that he's only

02:44PM 14 aware of the world that he's living in at this point.

02:44PM 15 Q. I don't think I asked you yet, but during your timeframe

02:44PM 16 of treating Mr. Marranco, did his dementia get worse?

02:44PM 17 A. I would say yes, because his behaviors over -- a good

02:45PM 18 indication of a -- patients that are -- is advancing in their

02:45PM 19 you know, their behaviors become morass. They begin to fall

02:45PM 20 more often, as evidenced by the fall he had in Florida and

02:45PM 21 stuff like that. So, he was certainly on a tailspin of going

02:45PM 22 downhill.

02:45PM 23 Q. And what about his general physical health? Dementia

02:45PM 24 aside, how would you describe that in the timeframe over

02:45PM 25 which you treated him?

02:45PM 1 A. I'm sorry. Can you repeat the question?

02:45PM 2 Q. Sure. Other than the dementia, Mr. Marranco's physical  
02:45PM 3 health in the years you treated him, how would you describe  
02:45PM 4 that trajectory?

02:45PM 5 A. I would still say that he was, you know, frail. He had  
02:45PM 6 multiple medical problems. He was incontinent, you know,  
02:45PM 7 hypertension. And these guys are -- when they reach the time  
02:46PM 8 that they get into -- and I know I keep saying it -- but when  
02:46PM 9 they reach the time they get into this program, they're very  
02:46PM 10 frail and can, you know -- and they go downhill. His vitals  
02:46PM 11 were, you know, I'm looking at his vitals here. They're  
02:46PM 12 stable and stuff like that, but over all, just because your  
02:46PM 13 vitals are stable doesn't necessarily mean that -- you know,  
02:46PM 14 I think in this note, I even put his condition was fair.

02:46PM 15 THE COURT: You said hypertension?

02:46PM 16 THE WITNESS: Yes, sir.

02:46PM 17 THE COURT: It says here blood pressure 124/60.

02:46PM 18 THE WITNESS: His blood pressure was controlled with  
02:46PM 19 medications. He was on lisinopril and furosemide. They are  
02:46PM 20 both antihypertensives.

02:46PM 21 THE COURT: Oh, okay. Because that doesn't seem like  
02:46PM 22 hypertensive.

02:46PM 23 THE WITNESS: No.

02:46PM 24 BY MR. KHALIL:

02:46PM 25 Q. I believe you were asked earlier by the Judge about when

02:46PM 1 progress notes are generated and you indicated any time there

02:46PM 2 is contact with the patient. Is that accurate?

02:47PM 3 A. That is correct.

02:47PM 4 Q. Are there other times that progress notes or nursing

02:47PM 5 notes might be generated?

02:47PM 6 A. If a patient sustains like, a fall and then we generate a

02:47PM 7 fall note. So, my nurse will put in an incident report

02:47PM 8 because the VA is very, very, very anal about tracking falls.

02:47PM 9 So, there's an incident report that is put in and my nurse

02:47PM 10 will put in a note. Then, I'll put in a note and our

02:47PM 11 pharmacists will also put in a note and so will our physical

02:47PM 12 therapist.

02:47PM 13 Q. Let's go to page 597. Do you have that up there,

02:47PM 14 Mr. Hennessy?

02:47PM 15 A. I do.

02:47PM 16 Q. Now, you just described a fall note. Are we looking at a

02:48PM 17 fall note here?

02:48PM 18 A. Yes. So, this is Ted's fall note from that -- this is --

02:48PM 19 we generated this fall note from the Florida fall.

02:48PM 20 Q. So, this fall note dated July 25th refers to the fall

02:48PM 21 three weeks prior?

02:48PM 22 A. Correct.

02:48PM 23 Q. That you were only told about on July 25th?

02:48PM 24 A. That's correct.

02:48PM 25 Q. And even though it happened off VA property, you or your

02:48PM 1 nurse generate a fall report?

02:48PM 2 A. We still want to track any falls that may have occurred  
02:48PM 3 so we can get an idea of what's going on with these falls.

02:48PM 4 Q. And you referred to him as Ted, but Mr. Burzynski, he was  
02:48PM 5 with you on July 25th?

02:48PM 6 A. That is correct.

02:48PM 7 Q. And he generated this note?

02:48PM 8 A. That is correct.

02:48PM 9 Q. It's common practice whenever a fall occurs to generate a  
02:48PM 10 fall note?

02:48PM 11 A. Every single time, we generate it if we know about a  
02:48PM 12 note -- or if we know about a fall. Again, it has to be  
02:48PM 13 known to us that this fall has occurred. If a note -- if  
02:49PM 14 someone has fallen and we were aware of it, an incident  
02:49PM 15 report, a nursing note, a provider note and a pharmacy and  
02:49PM 16 physical therapy note would have all been generated.

02:49PM 17 Q. Other than generating this note, what else is done in  
02:49PM 18 response to a fall by a patient? For example, on the next  
02:49PM 19 page we have a fall risk score, it looks like?

02:49PM 20 A. Yes.

02:49PM 21 MR. KHALIL: And I'm going to the top of page 598,  
02:49PM 22 Your Honor.

02:49PM 23 BY MR. KHALIL:

02:49PM 24 Q. I'm sorry. You were saying, Mr. Hennessy?

02:49PM 25 A. So, this generates the high risk of fall so that we know

02:49PM 1 the patient is at high risk for falls. It's based on the  
02:49PM 2 number system. And greater than -- you know, 45 is an  
02:49PM 3 indicator that the patient is high risk for falls.

02:49PM 4 Q. And do you perform this or does a nurse perform this?

02:50PM 5 A. This is generated by the nurse.

02:50PM 6 THE COURT: It says fall risk score of 55. What does  
02:50PM 7 that mean?

02:50PM 8 THE WITNESS: That means the numbers, Your Honor,  
02:50PM 9 is -- are high risk for falls. Because of the patient falls,  
02:50PM 10 we go through each one of those different categories, history  
02:50PM 11 of falls, yes. So, he generated 25 points for that.

02:50PM 12 Secondary diagnosis, yes. He has dementia, so that generated  
02:50PM 13 more points. So, all these generate points and it will give  
02:50PM 14 us an indication of -- if the patient is above 45, he is a  
02:50PM 15 high risk of falls.

02:50PM 16 THE COURT: It says -- oh, okay. So, all those then,  
02:50PM 17 it adds up to 55?

02:50PM 18 THE WITNESS: Yes, sir.

02:50PM 19 THE COURT: Oh, okay.

02:50PM 20 BY MR. KHALIL:

02:50PM 21 Q. And then, below that we see it's signed by Thaddeus  
02:50PM 22 Burzynski, the nurse, correct?

02:50PM 23 A. That's correct.

02:50PM 24 Q. And now, all this receipt acknowledged by, who are all  
02:50PM 25 these people?

02:50PM 1 A. These are people on the team that's going to follow up on  
02:51PM 2 that fall; so, our occupational therapist, myself, our low  
02:51PM 3 vision clinic and our physical therapist.

02:51PM 4 Q. So, all of these people are in some way treating  
02:51PM 5 Mr. Marranco or involved in his care?

02:51PM 6 A. They can be in connection, depending on if it's -- so, we  
02:51PM 7 let the low vision guy know that if he was at risk for low  
02:51PM 8 vision, that they could follow up on it. So, we kind of let  
02:51PM 9 people know that, you know, we want them to be aware that  
02:51PM 10 this gentleman had a fall. Is there something, from their  
02:51PM 11 point of view, that they need to do to do an intervention.

02:51PM 12 Q. Is there anything that excuses the generating of a fall  
02:51PM 13 report?

02:51PM 14 A. No.

02:51PM 15 Q. Based on your review of the September 5th and 6th records  
02:51PM 16 by Mr. Burzynski, did you see a fall report?

02:52PM 17 A. There's no fall report.

02:52PM 18 Q. Had Mr. Burzynski been told that a fall occurred, would  
02:52PM 19 he have generated one?

02:52PM 20 MR. MORATH: Objection, Your Honor, to what somebody  
02:52PM 21 else would have done.

02:52PM 22 THE COURT: Well, is it the practice of the Veterans  
02:52PM 23 Hospital to generate one?

02:52PM 24 MR. KHALIL: Yes, Your Honor.

02:52PM 25 THE COURT: Is that the practice?



02:52PM 1 THE WITNESS: Yes, sir.

02:52PM 2 THE COURT: All right.

02:52PM 3 BY MR. KHALIL:

02:52PM 4 Q. So, based on the records you reviewed and your treatment  
02:52PM 5 of Mr. Marranco, what was the earliest date that he could  
02:52PM 6 have fallen prior to his admission to respite care?

02:52PM 7 MR. MORATH: Objection. Pure speculation, Your  
02:52PM 8 Honor.

02:52PM 9 THE COURT: Overruled.

02:52PM 10 THE WITNESS: The only -- three weeks, but the one in  
02:52PM 11 Florida is the only one that we have record of happening prior  
02:52PM 12 to the last visit on September 6th. So, any visit prior to  
02:52PM 13 September 6th would have generated some type of fall note;  
02:52PM 14 definitely would have generated a fall note and our incident  
02:53PM 15 report.

02:53PM 16 MR. KHALIL: Your Honor, if I may have one minute to  
02:53PM 17 confer with my co-counsel?

02:53PM 18 THE COURT: Okay.

02:53PM 19 BY MR. KHALIL:

02:53PM 20 Q. Mr. Hennessy, based on your review of the records, did  
02:53PM 21 any fall occur on September 5th or 6th, after  
02:53PM 22 Mr. Burzynski -- or I'm sorry -- prior to Mr. Burzynski  
02:53PM 23 seeing Mr. Marranco?

02:53PM 24 A. No.

02:53PM 25 MR. KHALIL: No further questions, Your Honor.

02:53PM 1 MR. MORATH: I'll get this done by 3:15, Your Honor.

02:53PM 2

02:54PM 3 REDIRECT EXAMINATION

02:54PM 4

02:54PM 5 BY MR. MORATH:

02:54PM 6 Q. Mr. Hennessy, you seem to have coined the phrase frail,

02:54PM 7 demented, ill old man. This frail, demented, ill old man,

02:54PM 8 Mr. Marranco, every record you've looked at today, he was

02:54PM 9 able to ambulate on his own, right?

02:54PM 10 A. Again --

02:54PM 11 Q. Yes or no, sir. He was able to ambulate?

02:54PM 12 A. He was able to ambulate when I saw him, yes.

02:54PM 13 Q. He was able to bear his own weight when you saw him?

02:54PM 14 A. Yes.

02:54PM 15 Q. The family never told you that this frail, demented, ill

02:54PM 16 old man could never bear his weight or could never walk, did

02:54PM 17 they?

02:54PM 18 A. I can't recall.

02:54PM 19 Q. He could still perform his activities of daily living

02:54PM 20 when you saw him?

02:54PM 21 A. That is incorrect.

02:54PM 22 Q. Other than bathing and cooking his own food, he could

02:54PM 23 dress himself. Are you aware that he could dress himself?

02:54PM 24 MR. KHALIL: Objection, Your Honor.

02:54PM 25 THE COURT: Well, if he knows.

02:54PM 1 THE WITNESS: I believe the family was helping him  
02:54PM 2 get dressed as well.  
02:54PM 3 BY MR. MORATH:  
02:54PM 4 Q. Ms. Greasley testified this morning that he dressed  
02:54PM 5 himself. Do you have any reason --  
02:55PM 6 MR. KHALIL: Objection, Your Honor.  
02:55PM 7 THE COURT: I haven't heard a question. I don't  
02:55PM 8 know --  
02:55PM 9 BY MR. MORATH:  
02:55PM 10 Q. Ms. Greasley testified this morning that he was able to  
02:55PM 11 put his clothes on, other than his dress shoes. Do you have  
02:55PM 12 any reason to disagree with that?  
02:55PM 13 MR. KHALIL: Objection, Your Honor.  
02:55PM 14 THE COURT: Overruled.  
02:55PM 15 THE WITNESS: I only -- no. I can't tell you.  
02:55PM 16 BY MR. MORATH:  
02:55PM 17 Q. And this frail, demented, very sick, ill old man never  
02:55PM 18 needed oxygen when you saw him?  
02:55PM 19 A. That's correct.  
02:55PM 20 Q. Never was on any narcotic pain medications?  
02:55PM 21 A. That's correct.  
02:55PM 22 Q. Was able to get out of his kitchen chair by himself?  
02:55PM 23 A. That's correct.  
02:55PM 24 Q. All of these things this individual was able to do before  
02:55PM 25 he left for respite on September 9th based on everything you

02:55PM 1 know, right?

02:55PM 2 MR. KHALIL: Objection, Your Honor.

02:55PM 3 THE COURT: Overruled.

02:55PM 4 THE WITNESS: Repeat that. I'm sorry.

02:55PM 5 BY MR. MORATH:

02:55PM 6 Q. Sure. You described him as on the death -- doorsteps of

02:55PM 7 death's -- death's doorstep; this frail, ill, sick old man.

02:55PM 8 Do you know that his daughter testified this morning that he

02:55PM 9 lived his daily life just fine, was able to care for himself,

02:55PM 10 was able to watch TV, was able get in and out of a chair, was

02:56PM 11 able to get in and out of bed, was able to walk across his

02:56PM 12 house, was able to walk five houses down to Denny's? Did you

02:56PM 13 know any of that?

02:56PM 14 A. Well, let me --

02:56PM 15 Q. Yes or no?

02:56PM 16 MR. KHALIL: Objection, Your Honor.

02:56PM 17 THE COURT: Overruled. Go ahead.

02:56PM 18 BY MR. MORATH:

02:56PM 19 Q. Did you know any of that?

02:56PM 20 A. I did not, but you can't --

02:56PM 21 Q. Okay. Thank you. Thank you. And you said the only time

02:56PM 22 you have ever seen him walk was at home. Well, that kind of

02:56PM 23 makes sense because that's the only place you ever saw him,

02:56PM 24 correct?

02:56PM 25 A. That's correct.

02:56PM 1 Q. Now, you talked about these demented, ill people can't  
02:56PM 2 tell you when they're hurting; they lie, they're afraid  
02:56PM 3 they're going to get sent out to a nursing home. You talked  
02:56PM 4 to Mr. and Mrs. Marranco every time you were there, or at  
02:56PM 5 least one of them, didn't you, about his condition?  
02:56PM 6 A. With Mr. Marranco, correct.  
02:56PM 7 Q. With Paul or Loretta Marranco, about their father's  
02:56PM 8 condition, correct?  
02:56PM 9 A. That's correct.  
02:56PM 10 Q. And they told you how their father was doing, how their  
02:56PM 11 father was feeling, if there was any new injuries, if there  
02:56PM 12 was any new pain, did they not?  
02:56PM 13 A. When they were there for the appointment.  
02:57PM 14 Q. They told you. And nobody was in a better position to  
02:57PM 15 know that better than them, was there? Was there? They saw  
02:57PM 16 him every day?  
02:57PM 17 THE COURT: Do you know what -- can you answer that,  
02:57PM 18 sir?  
02:57PM 19 THE WITNESS: When I saw him, they would answer the  
02:57PM 20 questions.  
02:57PM 21 BY MR. MORATH:  
02:57PM 22 Q. Okay. You're questioning Mr. Marranco's honesty, Paul --  
02:57PM 23 Michael Marranco's honesty, that he may not have told you he  
02:57PM 24 was in pain because he was afraid his daughter was going to  
02:57PM 25 send him to a nursing home. They told you everything that

02:57PM 1 you asked them, didn't they?

02:57PM 2 MR. KHALIL: Objection, Your Honor. That

02:57PM 3 mischaracterizes the testimony.

02:57PM 4 THE COURT: Overruled. Go ahead.

02:57PM 5 THE WITNESS: I can't recall everything they said,

02:57PM 6 but sure. I mean --

02:57PM 7 BY MR. MORATH:

02:57PM 8 Q. And you had no basis to not believe anything they told

02:57PM 9 you, right? Take that as a yes?

02:57PM 10 A. Yes.

02:57PM 11 MR. MORATH: If we could pull up Exhibit 590, please.

02:57PM 12 I'm sorry. Page 590.

02:57PM 13

02:57PM 14 BY MR. MORATH:

02:58PM 15 Q. And you read this one part of the note about the fall in

02:58PM 16 Florida, but you conveniently skipped the line where he says

02:58PM 17 everything is okay now, right? That's what it says?

02:58PM 18 MR. KHALIL: Objection, Your Honor. It doesn't say

02:58PM 19 that.

02:58PM 20 THE COURT: I don't know where you're reading.

02:58PM 21 MR. MORATH: Which is okay now.

02:58PM 22 BY MR. MORATH:

02:58PM 23 Q. So, you read that the patient fell in Florida, you read

02:58PM 24 that he hit his flank area. You read that he ended up with

02:58PM 25 bruising. You read that 911 was called and you even got into

02:58PM 1 Mr. Marranco's mind and told us why he refused to go to the  
02:58PM 2 ER, but you skipped the part that says it's okay now, right?  
02:58PM 3 Yes?  
02:58PM 4 A. Yes.  
02:58PM 5 Q. So, you had no problems with that fall, based on your  
02:58PM 6 examination?  
02:58PM 7 A. At that time, no.  
02:59PM 8 Q. And certainly, if you thought he had an injury, you would  
02:59PM 9 have done something more, you wouldn't ignore it?  
02:59PM 10 MR. KHALIL: Objection, Your Honor. Is that a  
02:59PM 11 question?  
02:59PM 12 MR. MORATH: It is a question.  
02:59PM 13 BY MR. MORATH:  
02:59PM 14 Q. You wouldn't ignore it, would you?  
02:59PM 15 A. No.  
02:59PM 16 Q. And he doesn't even say the word back in there. He had  
02:59PM 17 some bruises on his ribs, right?  
02:59PM 18 A. On his flank.  
02:59PM 19 Q. Says ribs. I'm sorry. His flank area. What is the  
02:59PM 20 flank?  
02:59PM 21 A. It's the lower part of the back.  
02:59PM 22 Q. Okay. And does the word back injury appear anywhere on  
02:59PM 23 there or suspicion of back injury or questionable back  
02:59PM 24 injury?  
02:59PM 25 A. No.

02:59PM 1 MR. MORATH: If we can go to page 591, the next page.

02:59PM 2 BY MR. MORATH:

02:59PM 3 Q. I believe you looked at barriers -- is that where it says

02:59PM 4 barriers? We'll use this page. When you did this physical,

02:59PM 5 this frail, demented old man, this ill man you said yourself,

03:00PM 6 he was still able to independently transfer, right? Says it

03:00PM 7 right there. Yes?

03:00PM 8 A. He did --

03:00PM 9 Q. Does it say yes? Does it say independent with transfers?

03:00PM 10 Yes.

03:00PM 11 A. I did put yes, but --

03:00PM 12 Q. Okay. Does it say independent --

03:00PM 13 THE COURT: Wait, wait, wait --

03:00PM 14 MR. MORATH: Trying to explain --

03:00PM 15 THE REPORTER: Stop.

03:00PM 16 THE COURT: The witness is going to be able to finish

03:00PM 17 their answer. Stop cutting him off. Let him finish the

03:00PM 18 answer.

03:00PM 19 BY MR. MORATH:

03:00PM 20 Q. The question is, Mr. Hennessy, very simple. Does that

03:00PM 21 record say independent with transfers? Yes? Does the record

03:00PM 22 say that?

03:00PM 23 A. I'm just --

03:00PM 24 MR. MORATH: Judge, it's a simple question.

03:00PM 25



03:00PM 1 BY MR. MORATH:

03:00PM 2 Q. Does the record say yes?

03:00PM 3 A. Let me explain. We put yes, because the patient --

03:00PM 4 because of his dementia, we put yes, because he's going to do

03:00PM 5 what he wants anyway. So, we can't -- these guys, you got to

03:00PM 6 remember, they need to -- they don't listen to what you say.

03:00PM 7 Q. Mr. Marranco, was he physically capable of transferring

03:00PM 8 himself independently? Yes?

03:00PM 9 A. Yes.

03:00PM 10 Q. Okay. He was physically capable of ambulating?

03:01PM 11 A. Yes.

03:01PM 12 MR. MORATH: Can we go to 592? Oh, I'm sorry. 591.

03:01PM 13 I'm sorry. That was the right page.

03:01PM 14 BY MR. MORATH:

03:01PM 15 Q. And we have the problems listed at the top. We don't see

03:01PM 16 any chronic issues or chronic concerns with his back up

03:01PM 17 there, do we?

03:01PM 18 A. No.

03:01PM 19 Q. We don't see any chronic issues or chronic concerns with

03:01PM 20 his ambulation?

03:01PM 21 A. No.

03:01PM 22 MR. MORATH: Go to page 595, please.

03:01PM 23 BY MR. MORATH:

03:01PM 24 Q. Here you go through his -- what you describe as your

03:01PM 25 physical exam. All the vitals, constitutional, the chest,

03:01PM 1 the respiratory, cardiovascular, gastrointestinal. Any

03:01PM 2 concerns with his back in there?

03:02PM 3 A. None documented.

03:02PM 4 Q. And you said a lot of things about his dementia was

03:02PM 5 progressing. His dementia was progressing. And you made a

03:02PM 6 comment about how you felt he -- physically, he was, in some

03:02PM 7 way, declining as well. You'd agree with me, every record we

03:02PM 8 looked at, there was no change in his ability to ambulate,

03:02PM 9 was there?

03:02PM 10 A. With ambulation? Correct.

03:02PM 11 Q. No ability to transfer himself?

03:02PM 12 A. No.

03:02PM 13 Q. Okay. And there's no record that the family ever told

03:02PM 14 you he was having a physical decline, is there?

03:02PM 15 A. Well, he had the falls.

03:02PM 16 Q. That he had a physical decline, that his physical

03:02PM 17 condition was declining? Healthy people fall.

03:02PM 18 MR. KHALIL: Objection. Argumentative.

03:02PM 19 THE COURT: Sustained.

03:02PM 20 BY MR. MORATH:

03:02PM 21 Q. Is there anything in the record that the family reported

03:02PM 22 to you they noticed his physical ability is declining?

03:02PM 23 A. Physical abilities? Yeah. He was going to respite for

03:02PM 24 the reason -- are you asking for ambulation or are you --

03:02PM 25 physically could mean a ton of things --

03:02PM 1 Q. Why do you keep --

03:03PM 2 A. -- that he's not doing the ADLs. He's not able to shower  
03:03PM 3 himself. So -- but if you're asking physically, are you  
03:03PM 4 asking me about specifically --

03:03PM 5 Q. I'll ask you --

03:03PM 6 A. -- about ambulation or are you asking me specifically  
03:03PM 7 what physically could be -- you know, it's very general. So,  
03:03PM 8 if you ask me physically, they were sending him to respite  
03:03PM 9 because they couldn't care for him any longer or at this time  
03:03PM 10 they -- excuse me. Let me clarify that. They were -- he was  
03:03PM 11 going to respite because they were having more of a difficult  
03:03PM 12 time caring for him, so they were sending him away.

03:03PM 13 Q. What on Earth do you base that statement on?

03:03PM 14 A. That's why respite care is there. They're there for  
03:03PM 15 caregiver burden or burnout.

03:03PM 16 Q. Okay. Caregiver burden. Did you know that Paul Marranco  
03:03PM 17 had to have neck surgery?

03:03PM 18 A. I did not know.

03:03PM 19 Q. Did you know that Loretta was taking their mother to  
03:03PM 20 Florida to see her family?

03:03PM 21 A. Well, she was always in Florida, though.

03:03PM 22 Q. Did you know that Loretta was taking her mother to  
03:03PM 23 Florida to see family, yes or no?

03:03PM 24 A. She was always --

03:03PM 25 Q. Yes or no?

03:03PM 1 A. -- in Florida.

03:03PM 2 Q. Sir, yes or no?

03:03PM 3 A. I can't answer that because she was always --

03:03PM 4 Q. You did know.

03:03PM 5 A. -- in Florida.

03:04PM 6 Q. Did you know that Loretta testified --

03:04PM 7 THE COURT: Wait. Wait. Slow down. Let the witness

03:04PM 8 answer the question --

03:04PM 9 MR. MORATH: There was --

03:04PM 10 THE COURT: -- you can't fire five questions at him

03:04PM 11 at one time when he's talking. It doesn't make any sense. I

03:04PM 12 can't understand it, so stop it.

03:04PM 13 MR. MORATH: Thank you, Judge.

03:04PM 14 BY MR. MORATH:

03:04PM 15 Q. Mr. Hennessy, is it your testimony, right now, that you

03:04PM 16 think that Mr. Marranco was sent to respite for two weeks

03:04PM 17 because his family was having difficulty caring for him? Is

03:04PM 18 that what you believe?

03:04PM 19 A. I say for caregiver burden.

03:04PM 20 Q. Okay. Did you believe they sent him there because they

03:04PM 21 were having a difficult time caring for him?

03:04PM 22 A. Again, for caregiver burden.

03:04PM 23 Q. It's yes or no.

03:04PM 24 A. Caregiver burden, that's the reason they were -- they

03:04PM 25 were having some difficult time and they were --

03:04PM 1 Q. What makes you think they were having a difficult time?

03:04PM 2 A. This is what the respite is there for, caregiver burden.

03:04PM 3 Q. She testified this morning that it had nothing to do with

03:04PM 4 their ability to care for Mr. Marranco, for their farther, it

03:04PM 5 was because the son needed surgery and she was going to take

03:05PM 6 mom to Florida, it had absolutely nothing to do with their

03:05PM 7 ability to care for him. Do you have any reason to dispute

03:05PM 8 that?

03:05PM 9 A. Yes, because she was --

03:05PM 10 Q. Do you think --

03:05PM 11 A. -- in Florida.

03:05PM 12 MR. KHALIL: Objection.

03:05PM 13 THE COURT: Hold it. You may answer the question,

03:05PM 14 sir.

03:05PM 15 THE WITNESS: Thank you, sir.

03:05PM 16 THE COURT: Continue the question uninterrupted. Go

03:05PM 17 ahead.

03:05PM 18 THE WITNESS: Thank you, sir. We went to the place

03:05PM 19 on multiple times where Loretta was in Florida when we

03:05PM 20 scheduled visits to go there. So, you know, she traveled back

03:05PM 21 and forth to Florida on multiple times. So, when you say, oh,

03:05PM 22 she's taking her mother down there, she's going there on

03:05PM 23 multiple occasions.

03:05PM 24 BY MR. MORATH:

03:05PM 25 Q. Okay. Now let's focus on the question I asked you. Do

03:05PM 1 you have any basis to dispute the fact that she testified,  
03:05PM 2 under oath today and Mr. Marranco testified at his deposition  
03:05PM 3 that the only reason he went to respite was because he needed  
03:05PM 4 surgery and she was going to Florida and that it had nothing  
03:05PM 5 to do with their ability to take care of him? Do you any  
03:06PM 6 reason to dispute that?

03:06PM 7 A. Well, sure. In my records, I noted that he was combative  
03:06PM 8 with the son trying to shower him and do things with him, so  
03:06PM 9 there was combative behaviors.

03:06PM 10 Q. You're assuming it, sir?

03:06PM 11 A. Pardon me?

03:06PM 12 Q. That's you assuming it?

03:06PM 13 A. They physically told us that he was combative with them  
03:06PM 14 when they would --

03:06PM 15 Q. You are assuming why he went to respite. Did Paul  
03:06PM 16 Marranco or Loretta Marranco -- or Loretta Greasley ever tell  
03:06PM 17 you that he was going to respite because they couldn't care  
03:06PM 18 for him anymore? Did they ever tell you that?

03:06PM 19 A. They did not physically tell me that, no.

03:06PM 20 Q. Now, your very frail people theme, you'd agree with me  
03:06PM 21 that very frail people need some extra care, don't they?

03:06PM 22 A. Yes.

03:06PM 23 Q. You need to be careful when you are caring for a very  
03:06PM 24 frail person, don't you?

03:06PM 25 A. You do.

03:06PM 1 Q. And when you talk about those fall protections and those  
03:06PM 2 fall plans, that's very important that it's done accurately,  
03:06PM 3 isn't it?

03:06PM 4 A. That's correct.

03:06PM 5 Q. It's very important it's done correctly?

03:06PM 6 A. Correct.

03:06PM 7 Q. It's very important that the proper fall protections are  
03:06PM 8 put in place?

03:06PM 9 A. Correct.

03:07PM 10 Q. Because when frail people fall, frail people get hurt,  
03:07PM 11 right?

03:07PM 12 A. That's correct.

03:07PM 13 MR. MORATH: That's all I have, Your Honor.

03:07PM 14 MR. KHALIL: No questions, Your Honor.

03:07PM 15 THE COURT: Thank you, sir.

03:07PM 16 THE WITNESS: Thank you, sir.

03:07PM 17 (The witness was excused.)

03:07PM 18 THE COURT: Okay. It's almost 3:15. We'll adjourn  
03:07PM 19 for the day and resume tomorrow at 9:30 and we'll probably go  
03:07PM 20 until about -- I have a plea at 12, so we'll take a break  
03:07PM 21 around 12 and then we'll resume at 1 or 1:30 in the afternoon.  
03:07PM 22 Okay. Thank you, counsel.

03:07PM 23 MR. KHALIL: Thank you, Judge.

03:07PM 24 MS. FLEMING: Thank you, Judge.

03:07PM 25 MR. MORATH: Thank you, Your Honor.

1 (Proceedings adjourned at 3:07 p.m.)  
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I certify that the foregoing is a  
correct transcription of the proceedings  
recorded by me in this matter.

s/ Megan E. Pelka, RPR

Court Reporter,